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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 2

WILLIAM SCHNEIDERMAN, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 908–918) is reported at 119 F. (2d) 500. The opinion of the District Court (R. 39–45) is reported at 33 F. Supp. 510.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 28, 1941 (R. 919). The petition for a writ of certiorari was filed on July 26, 1941, and was granted on October 13, 1941 (R. 922). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The United States brought suit to cancel a certificate of naturalization, granted respondent in 1927, on the ground that it was illegally and fraudulently procured. The question is whether there is sufficient evidence to support the findings of the district court, generally concurred in by the court below, that petitioner at the time of his naturalization was not, and had not behaved as, a person attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; that he disbelieved in or was opposed to, or was a member of an organization which disbelieved in or was opposed to, organized government; and that he did not bear true faith and allegiance to the United States.

STATUTES INVOLVED

The statutes involved are set forth in Appendix A, *infra*, pp. 129–133.

STATEMENT

The United States, under 8 U. S. C. 405, *infra*, p. 129, on June 30, 1939, filed its complaint to cancel the certificate of naturalization issued to petitioner, a native of Russia, on the ground that it was illegally and fraudulently procured (R. 1–10). The petition alleged that at the time of his naturalization on June 10, 1927, petitioner was not, and during the five years prior to filing his petition for naturalization had not behaved as, a person

attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; and that during all this time petitioner was a member of and affiliated with certain communist organizations, believed in and supported principles which were opposed to the principles of the Constitution, and advised, advocated, and taught the overthrow of the Government, Constitution, and laws of the United States by force and violence (R. 2–5). An affidavit by an attorney in the Immigration and Naturalization Service, Department of Labor, made a part of the complaint (R. 3), also charged that petitioner when he took the oath of allegiance did not intend to bear true faith and allegiance to the Constitution and laws of the United States (R. 9).

Petitioner in his answer denied the material allegations of the complaint, except insofar as it charged his membership in the Communist Party of America, which he admitted (R. 11). He denied that at any time during which he was a member of it, the Party or related organizations believed in or advocated the overthrow of the Government, Constitution, or laws of the United States by force or violence or otherwise, and alleged that petitioner and the Communist Party believed in, advocated, and were committed to uphold the achievements of democracy and the rights of and to life, liberty, and the pursuit of happiness, and to defend the United States Constitution against all of its enemies (R. 12–13).

The evidence, which is set out more fully in the Argument, may be briefly summarized here as follows:

Petitioner was born in Rumanov, Russia, on August 1, 1905, and entered the United States either in 1907 (R. 72, 73) or in 1908 (R. 74). He filed his declaration of intention to become a citizen when he was eighteen (R. 72–73) and obtained a certificate of citizenship (R. 78–79) on June 10, 1927, when he was twenty-two (R. 78, 358).

In 1922, when petitioner was sixteen, he joined the Young Workers' League, and he remained a member until 1929 or 1930 (R. 86–87, 90, 860). In 1924 or 1925, at about the time he filed his declaration of intention to become a citizen, petitioner, then eighteen years old, became a member of the Workers' Party of America (R. 91, 860, 884) and has since been a member of that organization and its successors, the Workers' (Communist) Party of America and the Communist Party (R. 91–93, 98).[1]

Petitioner concededly was active in various official capacities in Communist Party organizations. He was an organizer and charter member of the Young Workers' League of California in 1922 (R. 87), and until about 1925 he was the educational director of the Young Workers'

[1] A summary of the history and nature of the various Communist organizations with which petitioner was affiliated is set out in Appendix B, *infra*, pp. 134–141.

League (R. 86–88).[2] In 1922 and in 1924 he served as a delegate to the national conventions of the League (R. 97).[3] In 1925, petitioner became City Central Secretary of the Workers' Party of America, in Los Angeles (R. 92, 175).[4] In 1928, he became District Organizer of the Young Workers' Communist League of America (R. 90–91, 176); in this capacity, he was an official spokesman for the League and directed its administrative, political, and educational affairs (R. 91). In that same year petitioner attended the Sixth World Congress of the Communist International, held at Moscow (R. 834).

From 1929 to 1930, petitioner was District Organizational Secretary of the Communist Party for District 13, comprising the States of Arizona, Nevada and California (R. 93, 96, 177–180); as such, he was in charge of dues and membership records, and, during the same period, he lectured generally on Communism (R. 93, 177, 829). In 1930, he also was District Organizer in Connecticut (R. 94). In the same year, and again in 1932, he was the Communist Party candidate for governor of Minne-

[2] Petitioner's duties as educational director were "to organize the educational activities of the League for which instructors were supplied" (R. 87, 359).

[3] Petitioner also attended the fourth national convention of the Workers' Party of America in 1925, but not as a delegate (R. 97).

[4] In this office, petitioner acted as corresponding secretary (R. 358, 359). Petitioner also occasionally wrote articles on request for the official Party newspaper (R. 101).

sota (R. 180, 363). From 1931 to 1934, petitioner was District Organizer of the Party for the Minnesota district which included Northern Wisconsin and Michigan (R. 95). In 1934, petitioner became District Organizer of the Party for the California district (R. 96), and attended the Seventh World Congress of the Communist International in Moscow (R. 95). From 1930 to 1938 petitioner was a delegate to five national biennial conventions of the Communist Party (R. 98) and since 1934 has been a member of the National Committee (R. 96). At the time of the hearing, he was California State Secretary of the Party (R. 96, 358–359) and a member of the State Central Committee (R. 363).

Petitioner testified that at the time of his naturalization he believed in the general principles of Marxism as expressed in the Manifesto (R. 123, 871–874), that he desired to bring about a "socialistic" form of government (R. 862, 898), and that ever since he was sixteen years old he has consistently "subscribed to the principles" of the Communist Party and the Communist International (R. 92, 102–103, 108), but said he believed that the "development of socialism would be a long-range process" (R. 898). Petitioner did not deny that force and violence would be required to achieve the objectives in which he believed but undertook to justify the use of such means (P 373–376, 862, 867–869, 876–877, 881–882, 885–886,

897–898). Petitioner also denied that he had borne allegiance to any foreign power (R. 886–887).

Petitioner stated that the "Constitution and By-laws of the American Communist Party," adopted in 1938 (R. 14–38), was the only official expression of the principles of that party (R. 364). But he testified in answer to a question by the court, and other evidence shows, that prior to 1938, the Party had in fact officially adopted resolutions at certain conventions (R. 837). Petitioner also stated that the 1938 constitution overrode any conflicting statement (R. 365–368, 834–839, 856–861) and that it represented the views which he personally had always maintained (R. 365). Petitioner testified, however, that, when naturalized, he fully agreed with the Program of the Communist International in so far as it interpreted general Marxian and Leninist theories (R. 108, 109); that he agreed with the 'general political conclusions adopted by the Sixth World Congress of the Communist International (1928) (R. 103); and that he was in agreement with the general program and principles of the Workers' (Communist) Party (R. 162). Since 1922, petitioner had "done all I could to educate the people in the principles of socialism" (R. 865). He considered himself to be "an expert" on Communism (R. 829). His testimony also shows that his views were not substantially different from those officially enunciated by the Party prior to 1938 concerning class conflicts

(R. 370–372, 390, 392), the existing government in the United States (R. 390, 392, 394, 864, 865, 866) and the form of government the Communists would impose in the United States (R. 376–377, 394–395, 863–864).

Much of the evidence in the record consists of books, official programs, and pamphlets issued, distributed, or used by various Communist organizations. The nature of this literature, the circumstances of its publication and distribution, and petitioner's familiarity with, acceptance, and use of it are set out in Appendix C, *infra*, pp. 142–151.

The program of the Communist International and the resolutions of the United States section were to the effect that in the event of hostilities with Soviet Russia the first allegiance of Party members was to be toward the U. S. S. R. (R. 117–119, 245–246). Agitation of the military forces was an integral part of the communist program (R. 155, 167–168, 171). Membership in the Party was shown by official programs and by the 1938 constitution to require undeviating obedience of the Party decisions as to policy and tactics (R. 20, 27; Ex. 26, pp. 5–8, 20–23, 31, 40–42, R. 274, 835; Ex. 27, p. 15, R. 264; Ex. 6, pp. 85–86, 88, 91–93, R. 109; Ex. 13, p. 128, R. 249; Ex. 12, pp. 24, 25, 93–96, R. 241).

The district court at the conclusion of the hearing filed a memorandum opinion (R. 39–45) and findings of fact and conclusions of law (R. 47–53).

The court found that petitioner was not at the time of his naturalization, and during the five-year period prior thereto had not behaved as, "a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same" as required by 8 U. S. C., sec. 382 (R. 48); and that petitioner's oath of allegiance to the United States, required by 8 U. S. C., sec. 381, was false in that petitioner maintained allegiance and fidelity to the U. S. S. R. and to the Third International (R. 51–52). The court also found that at the time of his naturalization and during the five years prior thereto, petitioner was a member of the Communist Party (R. 49), the principles of which were opposed to the Constitution, and advised, advocated, and taught the violent overthrow of the Government, Constitution and laws of the United States and disbelief in and opposition to organized government; that petitioner believed in, advocated and supported the principles of the Party (R. 49, 50, 51, 52); that petitioner was "a disbeliever in" and "opposed to organized government" and that he was a member of an organization "teaching disbelief in or opposed to organized government" (R. 48–51). The court therefore concluded that the decree of naturalization had been illegally (R. 48, 51) and fraudulently (R. 50, 51) procured, and entered its decree declaring void the certificate of citizenship (R. 54–55).

The court below affirmed (R. 919) on the ground that the certificate of naturalization was illegally procured (R. 912). It affirmed the findings of the district court that the Communist Party advocated the overthrow of the Constitution and laws of the United States by force and violence (R. 917) and that petitioner's adherence to the Party principles warranted disbelieving his testimony "as to his support of our Constitution and allegiance to this country" (R. 916, 918).

SUMMARY OF ARGUMENT

I

The Naturalization Act requires as conditions to an alien's acquisition of citizenship that the alien be, and behave as, a person attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; that he be not a disbeliever in, or opposed to, organized government or a member of an organization so disbelieving or so opposed; and that he abjure all fidelity and allegiance to foreign powers and bear true faith and allegiance to this Government. There is ample evidence to establish that petitioner failed to meet each of these statutory criteria in any one of several respects.

A. The evidence shows that petitioner's primary political loyalty was to definitive political organizations known as the Communist Party and the Third Communist International, and that

he did not bear true faith and allegiance to the United States. In case of hostilities between Soviet Russia and the United States, the Party's and petitioner's first allegiance would have been to Soviet Russia. As a member of the Party, he was subject to and accepted its political control, and adherence to its political principles and tactics was required of him. Similar control was exercised and similar adherence was imposed by the Communist International upon the Communist Party and petitioner. The structure of the communist organizations, their interrelationships, and their relations with their individual members resulted, *ex necessitate*, in petitioner's owing allegiance to powers other than the United States.

Conversely, the evidence establishes petitioner's lack of true faith and allegiance to the United States. It was a fundamental communist tenet that members of the Party had no country and owed no "social patriotism" to their "own" government; accordingly, in case of war Communists were to precipitate civil war and the army was to be induced to revolt.

B. The evidence also establishes that in three independent respects, petitioner was not, and had not behaved as, a person attached to the principles of the Constitution or well disposed to the good order and happiness of the United States.

1. Petitioner was not, and had not behaved as, a

person well disposed to the good order and happiness of the United States in that it was a basic communist principle, not disavowed by petitioner but accepted by him in his general subscription to Party principles, that Party members were bound to resort generally to illegal activities which promote the communist cause whenever and wherever necessary.

2. The evidence also establishes that the Communist Party and petitioner believed in, advocated, and taught the overthrow of this Government by force and violence. The official and officially distributed communist literature introduced in evidence affords a firm basis for the district court's conclusion that the Party espoused force and violence to accomplish its objectives. It was early stated by Marx that Communism could be achieved "only by the forcible overthrow of all existing social conditions." The principle of force and violence was thereafter reiterated and emphasized, particularly during petitioner's probationary period. So fundamental with the Party was force and violence at that time that other groups or individuals who advocated ends not substantially different from those of the Party, or who even taught force and violence but without enthusiasm, were severely condemned by the Party and, if members, were expelled.

Petitioner, while not in general repudiating force and violence, testified and introduced evi-

dence to the effect that the correct interpretation, and the interpretation to which he subscribed, of the communistic views on force and violence, was that they were not advocated, i. e., desired, but only predicted as a matter of "defensive" necessity. On any one of four different theories, however, the evidence relating to force and violence requires affirmance of the decree cancelling petitioner's citizenship.

First, if, as we contend, the concurrent findings of the courts below that the Party advocated force and violence are correct, petitioner, without more and regardless of his personal beliefs, was not entitled to citizenship. At the time of his naturalization, petitioner was subject to deportation under the express provision of the Immigration Act requiring deportation of aliens who were members of an organization which advocated, or which distributed literature advocating, overthrow of the Government by force and violence. We believe that these provisions governing deportation must be considered a part of the statutory criteria for citizenship since it can hardly be supposed that Congress intended that citizenship be granted to aliens who, at the same time, were disqualified from continued residence because of their political affiliations.

Second, even if it were to be assumed that there were two interpretations of the communist views relating to force and violence, to which of these in-

terpretations petitioner subscribed was an issue of fact. The record justifies the refusal of the courts below to believe that petitioner subscribed to the interpretation which regarded force and violence as undesirable, but which nevertheless predicted their "defensive" use.

Third, in the light of petitioner's activities and relationships in respect of this literature, and because of its import, he had not *behaved* as a person attached to the Constitution or well disposed to the good order of the United States. It seems plain that the communist literature during petitioner's probationary period was at the very least reasonably susceptible of being interpreted as advocating force and violence. Such was its clear import; on its face, it drew no distinction between prediction and advocacy. Petitioner was an active member and leader of the Party; he assisted in the circulation of the literature, attended the conventions at which much of it was formulated, and taught from it. Whatever may have been his personal and then unexpressed views concerning what the literature meant, he must be responsible, for present purposes, for its plain import.

Fourth, even if petitioner's testimony that the literature was to be interpreted in the manner for which he contends, and that this interpretation represented his personal views, be accepted, such interpretation itself constituted the advocacy of

force and violence. Petitioner's principles relating to force and violence were not simply passive; force and violence were not regarded as a matter of historical inevitability. Rather the Communists themselves were to follow a prescribed program in order to create the situation in which force and violence were to occur. Since the interpretation for which petitioner contends embodied active precipitation of civil war and the overthrow of the Government by force and violence, it is not substantially different from the interpretation for which the Government contended in the courts below.

3. Petitioner was not, and had not behaved as, a person attached to the principles of the Constitution in that he wholly disapproved of the principles embodied in it and in our existing political structure. It was the view of the organization to which he belonged that American democracy is a "fraud," that the present State must be "annihilated" and an entirely new system substituted. While it is true that an alien is not disqualified from citizenship because he believes that the Constitution and the existing political structure may be improved in some or many respects, we do not believe that Congress intended that the requirement of attachment be satisfied where the alien's attitude toward the basic principles of the Constitution is one of unrelieved criticism and disapproval.

This conclusion is reinforced by the legislative history of the naturalization laws. That history plainly establishes the congressional intent to bar from citizenship aliens who have not "acquired a taste for this kind of Government." 1 Debates in Cong. (Old Series) 1789–1790, p. 1157. Since, therefore, the evidence establishes that petitioner had not accepted, but was opposed to, the principles of the Constitution, he failed to satisfy the statutory test of attachment.

C. The evidence establishes that the Communist Party disbelieved in, or was opposed to, organized government. Any State was regarded as an instrument of oppression, and, consequently, was undesirable. Accordingly, it was the communist principle that the dictatorship of the proletariat, itself an "organ of class domination," was to be only a transitional form of government, to be followed by the ultimate "disappearance" or "withering away" of the State altogether. Petitioner did not disavow the principle of the disappearance of the State and no contrary evidence was introduced on this issue; petitioner's own evidence corroborated this view. Petitioner, therefore, fell under the express disqualification of the Naturalization Act.

II

On any of these grounds, petitioner's citizenship was properly cancelled. No contrary conclusion

is to be reached from the failure of Congress to have specified in express terms communistic beliefs or affiliations, as such, as a bar to citizenship. The text as well as the legislative history of the naturalization laws make clear that Congress used broad terms such as attachment, favorable disposition, and allegiance in order to permit the courts to exercise full discretion in the premises. It was impossible for Congress to have catalogued the full range of beliefs, principles, and conduct which may bar citizenship; this has traditionally been left to the courts.

No constitutional issue of free speech or free political thought is raised by cancellation of petitioner's citizenship in this case. There is here no issue of punishment, but rather the issue of entitlement to citizenship. It is plain that Congress may make, as it always has, political beliefs, affiliations and activities the touchstone of qualification of aliens for citizenship. Congress could have transmuted the constitutional guarantees available in other instances to aliens and citizens alike into legal rights due aliens seeking citizenship, by omitting qualifications of attachment to the Constitution, political affiliations, and allegiance. Since it has not done so, but, on the contrary, has affirmatively prescribed these qualifications, the issue is foreclosed here.

ARGUMENT

I

THE FINDINGS OF THE DISTRICT COURT ARE CLEARLY SUPPORTED BY THE EVIDENCE AND ITS JUDGMENT AND ORDER CANCELLING PETITIONER'S NATURALIZATION AND CERTIFICATE OF CITIZENSHIP MUST THEREFORE BE AFFIRMED

Nature of the Issues and of the Evidence

This case does not involve any question of economic doctrines; nor any question of international relations; nor any judgment on principles of internationalism save as they relate to the requirements of our naturalization laws. The case turns on the question of petitioner's allegiance and attachment to the United States and the Constitution at the time of his naturalization in 1927.

The district court found (1) that petitioner was not, at the time of his naturalization, and during the five years preceding the filing of his petition for naturalization had not behaved as a person attached to the principles of the Constitution or well disposed to the good order and happiness of the United States (R. 48); (2) that petitioner was a disbeliever in organized government and was affiliated with an organization teaching disbelief in organized government (R. 48–49); and (3) that at the time petitioner took his oath in the naturalization proceedings, he did not intend to support and defend the Constitution and laws of the United States or

bear true faith and allegiance to the United States, but intended to and did maintain allegiance and fidelity to the Union of Soviet Socialist Republics and to the Third International (R. 51)[5]; and (4) that petitioner was not merely a member of, but that he believed in the principles of, the Communist Party, which advocated overthrow of the United States Government by force and violence, and that its principles were opposed to those of the Constitution and laws of the United States (R. 48–52). It concluded, therefore, that petitioner had obtained his certificate of citizenship fraudulently and illegally (R. 52–53).

We believe it to be clear that an alien is not entitled to citizenship, and his certificate of citizenship may be cancelled, under any one of the following conditions existing at the time of his naturalization: (1) if the alien's political allegiance was to a state or political entity other than the United States; (2) if the alien advised, advocated, believed in, or taught general resort to violation of the laws of the United States; (3) if the alien

[5] The district court further found that petitioner had fraudulently obtained his certificate in that he had concealed his membership in, and his beliefs in the principles of, the Communist Party (R. 50–51). The court below expressly put this question to one side (R. 912). We do not here discuss the question whether petitioner's certificate was procured fraudulently by virtue of alleged concealment, except insofar as it is inherently relevant to the finding that petitioner's oath of allegiance was false. (See point I. A *infra*, pp. 28–52.)

advised, advocated, believed in, or taught the overthrow of this Government by force and violence, or advised, advocated, believed in, or taught doctrines the ordinary import of which is to advise, advocate, believe in, or teach such overthrow; (4) if the alien was an active, voluntary, and knowing member of an organization which advised, advocated, believed in or taught the overthrow of this Government by force or violence; (5) if the alien advised, advocated, believed in or taught principles opposed to the fundamental principles embodied in the Constitution and political structure of the United States; or (6) if the alien disbelieved in, or was opposed to, or was a member of an organization which disbelieved in or was opposed to organized government. We believe that if any of the first five conditions obtain, an alien is not entitled to citizenship because he fails to meet the statutory qualifications of undivided political allegiance to the United States, of attachment to the principles of the Constitution, and of favorable disposition to the good order and happiness of the United States. If the sixth condition obtains, of course, the alien falls under the specific disqualification embodied in 8 U. S. C. 364 (Appendix A, *infra*, p. 129).

The findings of the trial court, adverse to petitioner on each of these issues, must remain undisturbed since they rest on substantial evidence. Under the terms of the Naturalization Act, there-

fore, petitioner's certificate of citizenship must be cancelled.

1. While this conclusion results in revoking, on the basis of his political principles, relationships, and activities, his certificate of citizenship held for 15 years, it will be fully shown below that Congress has from the very beginning made political beliefs and principles a primary test of the right to naturalization. They are of the essence of the privilege of obtaining citizenship; a privilege which must be regarded as the most precious which the Government can grant. Consequently, observance of the statutory requirements may, of course, be insisted upon. Cf. *United States* v. *Ginsberg*, 243 U. S. 472, 475.

2. Contrary to the suggestion of *amicus curiæ* (Br. 16–17, 32, 35), a judgment granting a certificate of naturalization does not preclude a subsequent reexamination of the alien's right to have obtained the certificate; every certificate is deemed to be granted on the condition that the Government may subsequently challenge it as provided in Section 15 of the Act of June 29, 1906 (Appendix A, *infra*, p. 129) and cause its cancellation unless it was obtained in compliance with the prescribed requirements. *United States* v. *Ginsberg*, *supra*, at 475; *Johannessen* v. *United States*, 225 U. S. 227, 238. The right of the Government under Section 11 of the Act of 1906 (8 U. S. C. 399) to enter an appearance and object to the granting of a nat-

uralization petition and its right under Section 15 to sue to cancel a certificate of citizenship are cumulative, and not alternative rights, afforded the Government as a protection against fraudulent or illegal naturalization.[6] *United States* v. *Ness*, 245 U. S. 319, 325–327; *Maney* v. *United States*, 278 U. S. 17, 23. The proceeding is equitable in nature, and not penal (*Luria* v. *United States*, 231 U. S. 9, 27) and may be brought at any time subsequent to the issuance of the certificate. Cf. *Johannessen* v. *United States*, *supra* (proceeding to cancel begun more than 17 years after certificate had been granted).[7] In the instant case the lapse of time is particularly insignificant when it is noted that petitioner does not claim that there has been any change in his beliefs during the intervening period. The case is not one of attributing present views to a period of time long past. Cf. *United States* v. *Wursterbarth*, 249 Fed. 908 (N. J.); *United States* v. *Darmer*, 249 Fed. 989 (W. D. Wash.); *United States* v. *Herberger*, 272 Fed. 278 (W. D. Wash.); but cf. *Rowan* v. *United States*, 18 F.

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[6] As far as this record shows, the proceeding at which petitioner obtained his certificate was *ex parte*; the United States entered no appearance or objection (cf. R. 72–79).

[7] It has uniformly been held that the cancellation proceedings may be brought at any time after naturalization. *United States* v. *Ali*, 7 F. (2d) 728, 730, motion to set aside denied, 20 F. (2d) 998 (E. D. Mich.); *United States* v. *Spohrer*, 175 Fed. 440, 448 (N. J.); *United States* v. *Parisi*, 24 F. Supp. 414, 421 (Md.); *United States* v. *Marino*, 27 F. Supp. 155, 156 (S. D. N. Y.).

(2d) 246, 248 (C. C. A. 9). Rather the issue is whether during and before 1927, when petitioner was naturalized, his own beliefs, activities, and knowing affiliations were such as to meet the requisite criteria of attachment, favorable disposition, and allegiance.

3. It should be emphasized that the inquiry into the principles to which petitioner adhered and those of the organizations of which he was a member, and the interrelationships of those organizations, must in this case be, and is, confined to the relevant period up to and about 1927, when petitioner was naturalized. Although some evidence was adduced covering a period up to 1938, such evidence was designed solely to establish the nature of the communist principles and organizations during and before 1927. The critical time here is only until 1927. We are not, therefore, concerned in this brief with what the principles of the Communist Party are today or with its present relationship, if any, to the Third Communist International. This case is directed solely to the relevant earlier period and only that earlier period is intended to be included in our discussion.

4. The evidence consists chiefly of petitioner's own statements and relevant literature,[5] in the form of documentary exhibits introduced by both the Government and petitioner. While it is normally true,

[5] The literature introduced in evidence by the Government is listed in Appendix C, *infra*, pp. 142–151.

as petitioner suggests (Br. 32), that it is unsound to impute to an organization the views expressed in the writings of all its members, or to impute such writings to each member, it will be seen that, in this case, the literature in evidence is proof not only of the beliefs, principles and teachings of the Communist Party,[9] but also of those of petitioner.

The evidence establishes that the views embodied in the literature relied upon are not the vagrant expressions of independent individuals, but that both the author and the content of the literature were subject to the specific and rigorous control of the Communist Party (see Appendix C, *infra*, pp. 142–151). Further, many of the exhibits introduced by the Government comprised official reports, resolutions, platforms and programs of the Party.[10] These exhibits, as well as other Government exhibits, were published by the Party itself or through its official agencies, were distributed by the Party itself or through its official distributors.

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[9] For the sake of brevity, we use the term "Communist Party" throughout this brief to include the Young Workers' League of America, the Young Workers' Communist League of America, the Young Communist League of America, the Workers' Party of America, the Workers' (Communist) Party of America, and the Communist Party of the United States of America, with all of which petitioner was affiliated (*supra*, pp. 4–5). For a brief summary of the history and relationship of these organizations, see Appendix B, *infra*, pp. 134–141.

[10] Such official literature is listed in Appendix C, *infra*, pp. 142–151.

and were utilized as textbooks in the Party's own classes. See Appendix C, *infra*, pp. 142–151. This evidence establishing the official nature of these exhibits, and their official publication, distribution, and use plainly warrants their examination to determine the principles and beliefs of the Party.[11] In addition, these exhibits, since official and carefully supervised by the Party, are also some indication of petitioner's own beliefs because of his membership in the Party. *United States* v. *Tapolcsanyi*, 40 F. (2d) 255, 257 (C. C. A. 3); cf. *Whitney* v. *California*, 274 U. S. 357; *United States* v. *Swelgin*, 254 Fed. 884 (Ore.). Particularly are these exhibits probative of petitioner's views in the light of the strict discipline to which Party members were subject and the rigorous requirements of undeviating adherence to its principles (*infra*, pp. 29–45). The weeding out and

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[11] Cf. *Antolish* v. *Paul*, 283 Fed. 957, 959 (C. C. A. 7); *United States* v. *Tapolcsanyi*, 40 F. (2d) 255, 257 (C. C. A. 3); *United States* v. *Smith*, 2 F. (2d) 90, 91 (W. D. N. Y.); *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1); *Branch* v. *Cahill*, 88 F. (2d) 545 (C. C. A. 9); *In re Saderquist*, 11 F. Supp. 525, 526–527 (Me.), affirmed *sub nom. Sorquist* v. *Ward*, 83 F. (2d) 890 (C. C. A. 1); *In re Olson*, 4 F. (2d) 417 (W. D. Wash.); *United States* v. *Swelgin*, 254 Fed. 884 (Ore.).

Petitioner, however, testified that the only official statement of the principles of the Communist Party of the United States was the Party's 1938 constitution, and that all literature which was inconsistent with that constitution was not binding on the Party. We discuss this testimony below in connection with the issue to which it was directed. See, *infra*, pp. 73–76.

expulsion of dissidents was a first principle of the Party (Ex. 26, pp. 21–22, R. 274, 835; Ex. 13, p. 128, R. 249; Ex. 12, pp. 24, 25, 93–96, R. 241; see Ex. 18, p. 65, R. 166). In these circumstances, it is proper to assume petitioner's contemporary acceptance of the views expressed in the literature.

It is especially appropriate to regard this literature as expressive of petitioner's own views in the light of other evidence of his own activities and beliefs. Petitioner was not a rank and file or accidental member of the Party. He was not one who became and remained a Communist because of a vague belief that his lot would in some material aspects be better. He did not join because of some accidental chance of hearing a speech or listening to an organizer promising an improvement in his day-to-day lot.[12] Rather he joined in order to "investigate and study" the principles of Communism (R. 357). An intelligent and educated individual, he became a leader of these organizations as an intellectual revolutionary.

[12] It was a communist precept of organization to attract members by the use of "transitional slogans," and the advance of "partial demands corresponding to the concrete situation * * *. The Party must neither stand aloof from the daily needs and struggles of the working class nor confine its activities exclusively to them. The task of the Party is to utilize these minor every-day needs as a *starting point* from which to lead the working class to the *revolutionary struggle for power*." (Ex. 6, p. 79, R. 109; see also Ex. 10, pp. 38, 48, R. 152.) It may be that an individual who merely joins in the circumstances indicated by this expressed tactic stands on a different footing than petitioner.

He was active as an organizer, director, and delegate (*supra*, pp. 4–6); he attended several of the conventions at which the official programs and resolutions were adopted (*ibid.*); he used much of the literature as educational director of study classes and was generally familiar with its content.[13] And he affirmatively adhered, as a matter of deliberate and thoughtful choice, to communist principles in general, and to the principles of much of the literature (*supra*, p. 6; *infra*, pp. 99–100).

Petitioner at times purported to qualify his testimony by stating that the communist literature expressed his views in so far as it interpreted Marxism and Leninism. But petitioner did not deny, and contrary to the statement in his brief (p. 6), the evidence unequivocally shows, that there is and can be no more than one interpretation of the literature concerning communist objectives, aims and tactics, with the possible exception of the narrow issue of force and violence, and even as to this issue, it will be fully shown, *infra*, pp. 88–93, that the alleged distinction between prediction and advocacy is more apparent than real. Petitioner's contention that the courts below, by "a barefaced chain of imputations,

[13] Petitioner testified that he had read hundreds of books on the subject of Communism (R. 829). The evidence concerning his acceptance and use of, and familiarity with, the particular exhibits introduced by the Government is detailed in Appendix C, *infra*, pp. 146–151.

starting with the conflicting views of foreign writers" (Br. 32), imputed to petitioner one of two diverse interpretations of communist doctrines does not accurately reflect the record.

These several factors, we submit, warrant the use of the literature in evidence to ascertain petitioner's views at the time of his naturalization. His own testimony concerning his beliefs, to the extent inconsistent with the literature, must necessarily be measured against the documents and the evidence of his activities and of affirmative adherence to the communist principles.

A. THE FINDING THAT PETITIONER DID NOT BEAR TRUE FAITH AND ALLEGIANCE TO THE UNITED STATES IS AMPLY SUPPORTED AND THE DECREE MUST THEREFORE BE AFFIRMED

The district court found that petitioner at the time of his naturalization did not intend to bear true faith and allegiance to the United States but instead intended to maintain true faith and allegiance to the Union of Soviet Socialist Republics and to the Third International (R. 51); the court below held that petitioner's adherence to the principles of the Communist Party warranted disbelieving his testimony of allegiance to this country and, accordingly, affirmed the district court's findings on this issue (R. 916, 918). These concurrent findings are supported by evidence falling into two categories: (1) evidence establishing petitioner's subjection to primary political control and discipline of the Communist Party and of the Third Communist International; and (2) evi-

dence establishing that in still other respects petitioner lacked true faith and allegiance to the United States.

It seems plain that under the terms of the Naturalization Act an alien is wanting in the prerequisite allegiance either if his first political loyalty is to some power other than the United States, or if, irrespective of his allegiance in any other direction, his allegiance to the United States is lacking. We think that petitioner's citizenship must be cancelled in the light of the evidence under either of these categories, and that, *a fortiori,* it must be cancelled in the light of the evidence under both.

1. The evidence shows that during the relevant period petitioner was subject to the rigid political control imposed upon all members by the Communist Party, and that undeviating adherence to its principles and tactics was required of and given by petitioner. This basic principle of strict discipline was reflected in the "Statutes, Theses and Conditions of Admission to the Communist International" (1920) [14] (Ex. 26, pp. 40–41, R. 274, 835), which provided:

> In order to lead the working class successfully during the long stubborn civil

[14] This work was issued by the Workers' Party of America in 1923 and constituted the precepts of the Workers' (Communist) Party in 1925 (see *infra*, Appendix C, p. 146).

> war, the Communist Party must establish the strictest military discipline within its own ranks * * * Any delegate who in one way or another does not submit absolutely to the Party shall be expelled from the ranks of Communism.

The "Programme of the Communist International" (1928) [15] (Ex. 6, R. 109) expressed the requirements of adherence in like manner (p. 86):

> Party questions may be discussed by the members of the Party and by Party organizations until such time as a decision is taken upon them by the competent Party committees. After a decision has been taken by the Congress of the Communist International, by the Congress of the respective Sections, or by leading committees of the Comintern [Communist International], and of its various Sections, these decisions must be unreservedly carried out even if a section of the Party membership

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when petitioner was a member of that organization. While petitioner testified that he did not recall the particular edition in evidence, he did not disclaim its contents (R. 835–836).

[15] This work embodied the program adopted by the Sixth World Congress in 1928 (see *infra*, Appendix C, p. 148), which petitioner attended (R. 834). Although petitioner received his certificate of citizenship on June 10, 1927 (R. 78, 358), we submit that the "Programme," which was a statement of existing principles, was sufficiently contemporaneous to be probative of petitioner's views and of the situation which obtained a few months earlier.

> or of the local Party organizations are in disagreement with it.[16]

Petitioner was expressly subject to discipline of this nature; as a member of the Workers' Party during and after 1925, he was required to have pledged that he

> accepts the principles and tactics of the Workers Party of America and agrees to submit to its discipline (Constitution of the Workers Party of America, Ex. 27, p. 11, R. 276, Art. III, Secs. 1 and 2, R. 299–300).

In agreeing to bind himself to such discipline, he also agreed that "all decisions of the governing bodies of the Party" be binding upon him (*ibid.*, p. 15, Art. X, Sec. 1, R. 309).[17]

That, in this manner, members' primary political duty and loyalty was to the Party rather than to this country is indicated by the role assigned to members in the event that they were elected to public office. It was prescribed ("Stat-

[16] To the same effect, see Ex. 11, p. 73, R. 212; Ex. 10, p. 53, R. 152. Compare "Whoever in the least weakens the iron discipline of the party of the proletariat (especially during its dictatorship) actually aids the bourgeoisie against the proletariat" (Ex. 9, p. 29, R. 144).

[17] The provisions of the 1938 communist constitution (Ex. 5, R. 84) in respect of discipline are substantially similar. See Article III, Sec. 2 (R. 16), and Article VI, Secs. 6 and 7 (R. 20). Party members could resign from "responsible posts" only with permission of the organization which elected him "in consultation with the next higher committee." Article VI, Sec. 13 (R. 21).

utes, Theses and Conditions of Admission to the Communist International," Ex. 26, R. 274, 835; see *supra*, note 14) that (p. 52):

> Each Communist member [elected to a public legislative office] must remember that he is not a "legislator" who is bound to seek agreements with the other legislators, but an agitator of the Party, detailed into the enemy's camp in order to carry out the orders of the Party there. The Communist member is answerable not to the wide mass of his constituents, but to his own Communist Party—whether lawful or unlawful.[18]

In addition a member not only subjected himself to control of the Communist Party but also to control of the Third Communist International. Undeviating recognition of the decisions of the Third International, the parent body, was required of the Communist Party of the United States, and its members. That the Communist Party of the United States was affiliated with the Third International is not questioned (R. 379, 831; cf. R. 14, 29, 201, 202, 203, 205, 208). The significance and extent of this official affiliation is the only subject of dispute.

The basic principle of communist organization is strict subordination of national parties known as "sections" (R. 120), to the Third Com-

[18] To the same effect, see *ibid.*, pp. 41, 44–45; Ex. 14, p. 8.

munist International.[19] The Communist International was established in 1919, but it prescribed no precise regulations governing admission until, at the Second World Congress in 1920, it adopted its "Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835; see *ibid.*, p. 26). These "Statutes" declared the Communist International to be the single universal Communist Party (p. 5) and decreed that there should be only one Communist Party in each country (p. 42), to bear the name "Communist Party" of the given country "(section of the Third Communist International)" (pp. 5, 31).

Parties were permitted to join the Communist International if they adhered to the principles of the Third Communist International,[20] and if they fulfilled certain conditions, including the following (pp. 21–22): the weeding out and expulsion of all members and elements which continued to act in the spirit of the Second International, and of all members who repudiate the conditions and theses adopted by the Communist International:

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[19] The structure, organization, and composition of the Third Communist International is described *infra*, Appendix B, pp. 134–138.

[20] The application of the American Socialist Party had been rejected since it was not communist and had not given full "recognition of the dictatorship of the proletariat, and of Soviet power instead of the bourgeois democracy" (Ex. 26, p. 21, R. 274, 835).

the discussion by all local organizations, and the publication in all party periodicals, of resolutions to such effect; the transfer of all party periodicals into the hands of Communist editors; and the staffing of all Central Committees and of all chief central institutions with two-thirds of comrades who declared their adherence to a party of the Third International before the meeting of the Second World Congress of the Communist International.

Specific conditions for the ultimate full admission of sections were imposed, outlining the program and tactics to be followed by the sections (pp. 27–30). Express requirements of adherence to the Third International included: that general propaganda and the agitation of the parties correspond to the programs and decisions of the Third International (p. 27); that all parties adhering to the old "social and democratic" programs draw up a new communist program in accordance with the resolutions of the Third International (p. 30); that all parties immediately convene to discuss the conditions of admission and acquaint local organizations with the regulations of the World Congress of the Communist International (pp. 31, 32); that all party programs be subject to confirmation by the World Congress of the Communist International or the Executive Committee of the Communist International (pp.

5–6, 30–31)[21]; that all resolutions of the World Congress of the Communist International and of the Executive Committee of the Communist International be binding on all parties joining the Third International (p. 31); and that the Executive Committee of the Communist International be empowered to exclude or expel all groups which failed to comply with the international proletarian discipline and the regulations of the World Congresses (p. 7).

The "Programme of the Communist International, Together with the Statutes of the Communist International" (Ex. 6, R. 109), adopted at the Sixth World Congress of the Communist International in 1928 (R. 833, 834; see *supra*, p. 30, n. 15), reflected an expansion of the requirements of admission and discipline. The names of affiliated parties in various countries, and their number, were prescribed (Ex. 6, p. 85, R. 109). The World Congress of the Communist International retained the power to decide the program, tactics, and organizational questions connected with the activities of the various sections (p. 87). All decisions by the World Congress of the Communist International were required to be observed without qualification despite the disagreement of any section (p. 86). The Executive Com-

[21] For the nature, composition, duties and powers of the World Congress of the Communist International and its Executive Committee, see *infra*, Appendix B, pp. 136–138.

mittee of the Communist International also continued to be empowered to instruct all sections and control their activities, to make decisions binding on all sections pending appeal to the World Congress of the Communist International, to annul or amend decisions of party congresses and of central committees of parties, and to expel sections, groups, and individual members (p. 88). All programs of each section were subject to, and required, the endorsement of the Executive Committee of the Communist International; and all decisions and official documents of the Executive Committee of the Communist International were required to be published in the press of the various sections (pp. 88–89). In addition, the Executive Committee of the Communist International reserved the right to send instructed delegates to the sections; such representatives were authorized to participate in all meetings of the central bodies or local organizations of the sections, to oppose any committee whose program diverged from the principles of the Executive Committee of the Communist International, and to supervise the section's execution of the decisions of the World Congress of the Communist International and of the Executive Committee of the Communist International (pp. 89–90). The central committees of the sections were required to submit minutes of their meetings and reports of their work to the Executive Committee of the Communist Interna-

tional (pp. 91–92). Members of a section's central committee were permitted to resign only with the consent of the Executive Committee of the Communist International (p. 91). Similarly, the permission of the Executive Committee of the Communist International was a prescribed condition to the convening of a national congress by any section, and all sections were required to pay affiliation dues to the Executive Committee of the Communist International in the amount determined by it (p. 92). An International Control Commission was also established to investigate the "Communist conduct" of sections and of individual members (p. 91). Finally, it was provided that membership in a Communist Party and the Third Communist International was open only to those who accepted the program and rules of the Party and of the International and who abided by all decisions of the two organizations (p. 85).

The Workers' Party of America and the Workers' (Communist) Party of America in both of which organizations petitioner was an active member and leader (see *supra*, p. 5), were predecessors of the present Communist Party,[22] and, from 1921 to 1929, were affiliated with (R. 202, 831), comprised sections of (R. 201, 202, 203; Ex. 12, pp. 71–72, 123, 166, R. 241), and had accredited delegates to (R. 203), the Communist International, from which they received in-

[22] See *infra*, Appendix B, pp. 138–139.

structions and leadership (Ex. 12, pp. 18, 41, 63, 65–66, 166, R. 241; Ex. 13, pp. 13, 56–61, 86, 100, R. 248). Similarly the Young Communist Leagues, of which petitioner was an active leader from 1922 to 1929 (*supra*, pp. 4–5), were politically subordinate to the Communist Parties (Ex. 10, Foreword, p. 10, R. 152), and interchanged delegates with the Executive Committee of the Communist International. The Young Communist International in turn, was, at or about the time of petitioner's naturalization, designated as a section of the Communist International and subordinate to the Executive Committee of the Communist International (Ex. 6, p. 92, R. 109). The Young Workers' League of America, of which petitioner was a member, was affiliated with the Young Communist International and the Communist International (R. 90, 208; see Ex. 12, pp. 143, 144, R. 241).

Petitioner, however, testified that the Communist Party of the United States and its predecessor organizations were, during the relevant period, autonomous and independent.[23] He testified that, although these organizations were affiliated with the Communist International, the "question of the statutes became an academic question

[23] Petitioner's testimony on this issue was couched largely in terms of applicability only to the present Communist Party (R. 379–380) but analysis of the testimony indicates that he probably intended it to apply to the predecessor organizations and the period here in controversy (cf. R. 380, 831–832).

relegated to the field of theory" once the Communist Parties and the International were organized (R. 380, 831–832); that the American parties' affiliation to the International "took place under the express provision that we are not subject to and exempt from the 21 conditions of admission:" and that, accordingly, the American parties "are not obliged to carry out decisions of the Communist International" but, on the contrary, "always operated under their own rules and program" (R. 380–381; cf. R. 832). In support of his testimony, petitioner cited the 1938 constitution of the Communist Party of the United States (Ex. 5, R. 84), which provided that:

> The supreme authority in the Communist Party of the U. S. A. is the National Convention. * * * Only such a National Convention is authorized to make political and organizational decisions binding upon the entire Party and its membership * * * (Art. VIII, Sec. 1, R. 23);

and that:

> The Communist Party of the U. S. A. is affiliated with its fraternal Communist Parties of other lands through the Communist International and participates in International Congresses, through its National Committee. Resolutions and decisions of International Congresses shall be considered and acted upon by the supreme authority of the Communist Party of the U. S. A., the

> National Convention, or between Conventions, by the National Committee (Art. XI, R. 28-29).

In addition, petitioner introduced in evidence the recent statement of a leader of the Party to the effect that it was entirely independent and autonomous.[24]

The force of petitioner's evidence is destroyed by a number of factors. The record is barren of a single statement, documentary or otherwise, made during the period relevant to this case, or indeed, before 1938, relieving the American party of the admission requirements which are so clearly applicable, or of any single action of any of the organizations to which petitioner belonged qualifying their adherence. Whatever may have been the situation after 1938 [25] the absence of any resolution or other statement negating the clear terms of the "Statutes" and the 1928 "Programme" refutes petitioner's contention.

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[24] See Ex. G, telegram from Earl Browder to Chairman of New York Senate Judiciary Committee, March 15, 1939 (R. 446–447). See also the statement from "Leninism" (Ex. I, p. 83, R. 452–453) denying that "American Communists work under 'orders from Moscow' " since no Communist is "worth a cent" if he "would agree to 'work under orders' from outside against [his] own convictions and will and contrary to the requirements of the situation."

[25] As noted below, there is evidence to warrant the conclusion that, in any event, the 1938 constitution was not an entirely unambiguous statement of precepts. See *infra*, pp. 73–76.

In addition, affirmative evidence relating to the actual history of the Party during the relevant period compels the conclusion of subservience to the Third Communist International. Resolutions and other formal actions of the American parties persistently reflected, both generally and specifically, the control exercised by the International. Thus the Second National Convention of the Workers Party of America, held in 1921 (Ex. 27, Cover, R. 276), declared the basis of its policy to be the application of the policy of the International (Ex. 13, p. 13, R. 248). The "Program and Constitution of the Workers Party of America" (Ex. 27, R. 276), adopted by the Second National Convention in 1921 (Ex. 13, pp. 73–86, R. 248; Ex. 27, Cover, pp. 2–16, R. 276) and readopted in 1923–1924, when petitioner was a member of that organization (Ex. 27, Cover, R. 276), acknowledged the leadership and declared its sympathy with the principles of the International (*id.*, pp. 10, 11; Ex. 13, pp. 93, 100, R. 248; Ex. 26, Workers Party forword, inside front cover, R. 274, 835). The report of the Central Executive Committee to the Convention of the Workers' Party (1923–1924) summarized the steps taken to apply the policy of the International in the United States (Ex. 13, pp. 13, 14, 42, 43, 44, R. 48). The same report included a letter from the Executive Committee of the Communist International commenting on the past activities of the Party and instructing the Central Executive Com-

mittee of the Workers' Party of America concerning the methods of future activities (*id.*, pp. 56–61).

Formal actions on numerous issues repeatedly followed the instructions of the Executive Committee of the Communist International transmitted in this letter, and the resolutions noted the execution of such instructions (*id.*, pp. 73–86, 100–106). One resolution repeated the adherence to the Communist International (p. 100); another withdrew a previously stated policy laid down by the Party and referred the matter to the International "for decision as to the correctness of this policy" (p. 61); still another expressed doubts concerning the wisdom of a recommendation of the Executive Committee of the Communist International and requested the latter to reconsider its recommendation and refer it for consideration to the next convention of the Workers Party (p. 119).[26]

Similarly, the report of the Central Executive Committee to the Fourth National Convention of the Workers' (Communist) Party of America, 1925, and the resolutions adopted by the convention ("The 4th National Convention of the Workers (Communist) Party of America" (Ex. 12, R. 241)), which petitioner attended (R. 97), referred

[26] This is the only evidence in the resolutions or other formal actions of nonacceptance of the International's instructions. But even this request for reconsideration strongly evidences the Workers' Party subservience to the International.

to the execution of a policy which received the approval of "the Comintern [Communist International] in its resolution on the American question" (p. 10); recorded action in accordance with "the decision of the Comintern" on another issue (p. 10); reported that the "instructions of the Communist International" were carried out on a third issue (p. 18); included a new "basic activity" for the Party to "meet the criticisms by the Fifth Congress of the Comintern" (p. 19–21); repudiated certain theses which it had adopted in 1923 since they were contrary to a decision of the Comintern (p. 72); announced that factional differences in the Party were liquidated by decisions of the Communist International that wiped out the decisive political differences between the groups (p. 26); set up a new Commission "in accordance with the instructions of the Comintern" (*ibid.*); and urged the Party to assist the Central Executive Committee to "enforce * * * the decisions of the Communist International" (*ibid.*).[27] At the same convention, by motion unanimously carried, a Party member was expelled from the Workers' (Communist) Party for failure to adhere to principles laid down by the Comintern, and

[27] For the execution of various principles of the International through resolution of the Convention, see Ex. 12, pp. 63, 64, 65, 66, 70, R. 241. The resolution of the minority of the Convention refers also to many instances of Comintern direction of the activities of the Workers' (Communist) Party. See *ibid.*, pp. 66, 67.

for contempt of, and insubordination to, the Comintern (p. 96).[28]

In addition to the official resolutions and reports of the American parties, a Government witness who had been a member of the Party during the relevant period testified that the Party's Instructors' classes (R. 192–196) and neophyte classes (R. 193, 205) were taught that the Party was a section of the Communist International (R. 185, 195, 201, 205, 222), and that each member of the American section was also a member of the Communist International (R. 203). The undenied testimony of this witness was that, in fact, the Central Committee elected by the National Convention of the Communist Party of the United States in 1929 had been "immediately" ordered to Moscow and some of its members expelled (R. 204).

In the light of the evidence concerning the actual practice of the American parties prior to and contemporaneous with petitioner's naturalization

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[28] Much the same pattern is apparent in the "The Platform of the Class Struggle" (Ex. 15, R. 264) adopted at the convention of the Workers' (Communist) Party in 1928 and in the "Acceptance Speeches" (Ex. 14, R. 255) of the 1928 Communist candidates for president and vice-president in the national election. See Ex. 15, pp. 26–31, 62, R. 264. Indeed, even the Party's policy of putting up candidates for election to executive office was decided only after consultation with, and approval of, the leaders of the International (Ex. 14, p. 8, R. 255).

and probation, the conclusion is inescapable that, whatever the present situation, the organizations and their members were then subject to and had accepted the primary political control of the Third Communist International. The strict political subjection to the Communist Party, whose views, tactics, policies and principles the member, even if an official elected to public office, was obliged unquestioningly to accept,[29] exhausted his political loyalties and made impossible an oath of unreserved loyalty to the United States. It is submitted, therefore, that the primary political loyalties of petitioner, who was so active a member and leader of these organizations and who affirmatively subscribed to their general principles, were at the time of his naturalization wholly pledged by him to the Communist Party and to the Third Communist International, that he had none for the United States, and that his oath of allegiance was false.

2. Independently of, and supplementary to, our contention that his allegiance was affirmatively to the Communist Party and the Third International, we submit that, also on the basis of fundamental

[29] That the principles of discipline were not merely rhetorical is indicated by the testimony of Humphreys, a Government witness, who was expelled from the Communist Party for refusal "to take orders" and "to follow the decisions" of Party officials (R. 228). See also Ex. 12, pp. 96–98, R. 241.

communist precepts, petitioner was lacking in allegiance to the United States.[30]

The record discloses that during the period in question national loyalties to a capitalistic state were regarded as incompatible with the obligations of Party members, who were to have no "fatherland" and "no country" (Ex. 16, pp. 125, 126, R. 187; Ex. 7, p. 28, R. 124; Ex. 10, p. 45, R. 152). They were, accordingly, to renounce "social patriotism" (Ex. 26, pp. 28–29, Ex. 274, 835) and their "own" Government and country (Ex. L, pp. 12–13, R. 464; Ex. 16, pp. 124, 126, R. 187; Ex. 6, p. 83, R. 109). It was the duty of the proletariat to "destroy the bourgeois Fatherland, and not defend it or help extend it" (Ex. 16, p. 126, R. 187). That this doctrine may have been regarded as a measure of defense against apprehended aggression on the part of non-communist states is, of course, not legally relevant here, where the issue is simply petitioner's allegiance to the United States.

In the event of hostilities between the U. S. S. R.

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[30] The requisite allegiance is lacking either if the alien's allegiance is to some power other than the United States, or if he lacks allegiance to the United States. But evidence of affirmative allegiance to some other power is, of course, also evidence of a lack of allegiance to the United States. Accordingly while either of the two branches of our contentions in respect of petitioner's allegiance supports the findings of the lower courts, they also are complementary and together support such findings.

and the "imperialistic" and "capitalistic" powers [31]—

> We, members of the international proletariat, members of the exploited masses of the world, of the Communist Party and the Communist International, declare * * * we will defend the Soviet Union, which is our country—the country of the working class of the world. We will do everything in our power to rout the imperialist enemies and bring about the victory of the Red Army ("Acceptance Speeches" (1928), Ex. 14, p. 36, R. 255).[32]

Consistent with this purpose was the earlier pronouncement that—

> The Communist parties should carry on a precise and definite propaganda to induce the workers to refuse to transport any kind of military equipment intended for fighting against the Soviet Republics, and should also by legal or illegal means carry on propa-

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[31] The United States was included in the category of "imperialistic" and "capitalistic" powers. See, e. g., National Platform of the Workers' (Communist) Party, 1928, Ex. 15, p. 7, R. 264.

[32] To the same effect, see Ex. 14, p. 18, R. 255; Ex. 6, p. 65, R. 109; Ex. 15, p. 33, R. 264; Ex. 16, p. 126, R. 87. Petitioner testified that he agreed with the general program and principles of the Party at the time these speeches were made by the Communist candidates in the 1928 presidential campaign (R. 162). Although the speeches were made in 1928, we believe that they were sufficiently contemporaneous with petitioner's naturalization in June 1927 to reflect the principles of the Party during the relevant period.

> ganda amongst the troops sent against the workers' republics, etc. ("Statutes, Theses and Conditions of Admission," Ex. 26, p. 30, R. 274, 835).

A similar course was advised in the event of any "imperialistic" or "capitalistic" war, regardless of against whom waged:

> * * * Communists work with the utmost energy for the transformation of the imperialist war into a civil war in order to overthrow imperialism by means of a victorious proletarian revolution ("Programme of the Young Communist International," Ex. 10, p. 45, R. 152).[33]

To this end, in the course of such a war, the Communists were to "propagate revolutionary defeatism" and "agitate for the fraternisation of the soldiers of the imperialist armies which are arrayed against each other" (*id.*, p. 45),[34] and, as stated in another document:

> Workers in ammunition plants, go on strike! Shut down your plants! Prevent governmental strike-breakers from resuming work! Railroad men, refuse to handle war mate-

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[33] To the same effect, see Ex. 11, p. 12, R. 212; Ex. 14, p. 18, R. 255; Ex. 6, p. 83, R. 109; Ex. 16, pp. 114, 117, R. 187; Ex. 18, p. 43, R. 166.

[34] A "foremost" task of the program of the Young Communist League and the Communist Party was "revolutionary work in the bourgeois army through the organization of nuclei, revolutionary circles and groups, * * *" Ex. 10, pp. 46–47, R. 152. See also *infra*, pp. 57–58, and p. 52, n. 39.

> rials or to transport troops! Keep guard over your railroad yards and depots lest transportation facilities be used by governmental agents. Marine workers, do not load either men or ammunition! Truck drivers, refuse to assist in war work! Workers of other industries, help the strikers. Farmers, refuse to give your foodstuffs and raw materials to be used for the slaughter! ("Why Communism?", Ex. 18, p. 43, R. 166).[35]

Indeed, so fundamental was the principle that Communists were to refuse to support the war of the capitalist governments that it was one of the distinguishing characteristics between the Second International and the Third International. According to the Third International, the Second International collapsed and failed during the World War, 1914–1918, because of the "treason" of its leaders, of Social-Democrats, and of labor leaders, in supporting their respective governments during the War (Ex. 26, p. 4, R. 274, 835; Ex. 9, p. 51, R. 144; Ex. 16, pp. 121, 122, 124–126, 129, 135, R. 187; Ex. 6, pp. 6, 20, R. 109).[36]

To rebut this evidence, petitioner testified generally that the Communist Party of the United

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[35] See also Ex. 14, pp. 35–36, R. 255.

[36] Cf. "It is enough to compare the Leninist policy of transforming the Imperialist war into civil war with the traitorous policy of the Second International during the war, to understand the vileness of opportunism, the grandeur of Leninism" (Ex. 11, p. 12, R. 212).

States and its members are "obligated to defend our country [the United States] and its democratic institutions against any enemy from within or without, from at home or abroad" (R. 395).[37] He testified further that he believed that every worker has a country to which he owes allegiance (R. 876). Finally, he testified that although it "would not reflect my particular opinion[s] of such a war" he would bear arms on behalf of the United States in the event of a war against the U. S. S. R. "if required," but he believed that he "would have the right to those opinions and to express them" (R. 886–887).

We do not think that petitioner's unsupported testimony in 1939 on this issue, after the promulgation of the 1938 constitution, was sufficient to hold that the courts below were not warranted in their findings adverse to petitioner and relating

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[37] Article VI, Sec. 1, of the 1938 communist constitution (Ex. 5, R. 84) provides (R. 18–19):

> The Communist Party of the U. S. A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. The Communist Party of the U. S. A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort whether it comes from abroad or from within, to impose upon our people the arbitrary will of any selfish minority group or party or clique or conspiracy.

to 1927, the time of his naturalization (R. 51, 918).[38] His testimony and the inferences to be drawn from the 1938 communist constitution (*supra*, p. 50, n. 37) must be evaluated in the light of the official programs and literature prior to and shortly after the time when he was naturalized. These programs and the literature were known to, believed in, and used by petitioner (*supra*, pp. 23–28; *infra*, Appendix C, pp. 145–

[38] In addition to the evidence directly bearing on the issue of allegiance, other evidence relating to the Communist Party's general estimate, during the period of petitioner's probation, of the United States supports the conclusion of the courts below. These estimates were unvaryingly unfavorable. We discuss below the Communist criticism of the political structure of the United States, and its form of government (*infra*, pp. 94–98), and their concept of the existing State as an instrument of oppression by the capitalists (*infra*, pp. 71–72, 111–112). In addition, the literature in evidence is persistently and emphatically critical of every action and policy, foreign and domestic, of the United States, with which such literature deals. The literature, as well as petitioner's own testimony (cf. R. 390, 392–393, 394, 864–867), are wholly barren of any indication of approval of the Government or its actions. While we do not contend that an alien is disqualified from citizenship solely because he may find much in the actions and policies of the United States to criticize, and while we do not contend that criticism, standing alone and without other evidence concerning lack of allegiance, is decisive of the issue of allegiance, we believe that this evidence of unrelieved and fundamental criticism is corroborative of a lack of allegiance, since it can hardly be supposed that an alien can be unreservedly loyal to a nation in which he finds so much to criticize and nothing to approve.

151). The documents expressed views which, as we have noted, were fundamental to the replacement of the Second International by the Third. They unequivocally stated principles incompatible with the general principles of allegiance to which petitioner testified.[39] At most, the issue was one of petitioner's credibility, the meaning of his testimony, and the correct conclusion to be drawn from the evidence as a whole—an issue which was within the district court's competence to resolve. It cannot fairly be said that its resolution was erroneous. We believe, on the contrary, that it was correct.

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[39] Even petitioner's testimony of his willingness to bear arms must be measured against the communist principle that members should, where required, join the country's army, but for the purpose of agitating amongst the armed forces. For example, it was stated:

> The Communists reject the anarcho-syndicalist slogan of individual refusal to serve, or the "military strike." They do this in the spirit of the teaching of Lenin, who had the proletarian mother speak to her son in the following manner:
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> "You will soon be grown up. They will give you a gun. Take it and learn how to use it. This knowledge is necessary for the proletariat: not in order to shoot down their brothers, the workers of other countries, but in order to fight against the bourgeoisie of their own country, in order to put an end to exploitation, poverty and wars, not by means of pious wishes, but by victory over the bourgeoisie and by disarming it."
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> Similarly, "Boycott of the war is a stupid phrase." (Lenin.) The effect of individual refusal to serve is to free the army from precisely the revolutionary elements of the working class, and thereby to prevent the influencing of the masses of toilers in the army by means

B. THE FINDING OF THE DISTRICT COURT THAT PETITIONER WAS NOT, AND HAD NOT BEHAVED AS, A PERSON ATTACHED TO THE PRINCIPLES OF THE CONSTITUTION AND WELL DISPOSED TO THE GOOD ORDER AND HAPPINESS OF THE UNITED STATES IS ADEQUATELY SUPPORTED, AND THE DECREE MUST THEREFORE BE AFFIRMED

The evidence supports the district court's findings (R. 48–49) that petitioner, at the time of his naturalization and during his probationary period, lacked the requisite attachment to the principles of the Constitution and a favorable disposition to the good order and happiness of the United States. This evidence establishes (1) that petitioner advised, advocated, believed in, and taught general resort to violation of the laws of the United States in order to gain the communist objectives, and that, therefore, he was not, and had not behaved as, a person "well disposed to the good order and happiness of" the United States; (2) that he advised, advocated, believed in, and taught the overthrow of this Government by force and violence, and was a member of an organization so advising, advocating, believing and teaching and that therefore he was not and had not behaved as a person well disposed to the good order and happiness of the United States or attached to the principles of the Constitution; and (3) that petitioner did not believe in, but opposed the principles of the Constitution, and therefore, he was not, and had not

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of revolutionary explanatory work and organization ("Programme of the Young Communist International," Ex. 10, p. 46. R. 152). See also Ex. 16, p. 69, R. 187; Ex. 12, p. 135. R. 241; Ex. 26, pp. 19, 28. R. 274, 835.

behaved as, a person "attached to" its principles. In each of these respects, any one of which is fatal to his petition, petitioner lacked the necessary qualifications for citizenship.

1. *The decree must be affirmed since the evidence establishes that petitioner advocated and believed in general resort to violation of the laws.*

The documents introduced into the record establish that, during the relevant period it was a basic tenet of the communist organizations that illegal means be used whenever advantageous to the achievement of their program.[40] The Communists were enjoined to "submit to only one discipline" and that the "international proletarian discipline" ("Programme of the Communist International", Ex. 6, p. 84, R. 109).[41] Accordingly, "The Programme of the Young Communist International" (Ex. 10, R. 152), with whose general "political" or "theoretical" conclusions petitioner agreed (R. 103, 108), stated (Ex. 10, R. 152, pp. 40–41):

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[40] The advocacy of resort to illegal means would seem to be a corollary of the basic communist principle, repeated throughout the literature, that the State is a particular organ of suppression of the dominated class by the ruling group, and that the State is an organization of the "exploiting class." E.g., Ex. 8, pp. 5, 11, 13, R. 129. Upon the basis of this premise, laws were regarded as the means whereby oppression is effected. Hence Communists "cannot have respect" for such laws, and illegal acts are justified. Cf. "Why Communism?" Ex. 18, pp. 61–63, R. 166.

[41] To the same effect, see "Why Communism?" Ex. 18, pp. 62–63, R. 166.

> The Y. C. L. [Young Communist League] does not limit its activity to the framework of "legality" ordained by the bourgeoisie. In its struggle against capitalism, the Y. C. L. is continually compelled to combine its open legal activity with illegal and semi-legal work and therefore to overstep the limits laid down for it by bourgeois legality.

Similarly, it was prescribed in "Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835) that (pp. 18, 28):

> For all countries, even for most free "legal" and "peaceful" ones in the sense of a lesser acuteness in the class struggle, the period has arrived, when it has become absolutely necessary for every Communist party to join systematically lawful and unlawful work, lawful and unlawful organization.
>
> * * * * *
>
> The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus, which at the decisive moment should do its duty by the party, and in every way possible assist the revolution. In every country where, in consequence of martial law or of other exceptional laws, the Communists are unable to carry on their work lawfully, a combination

of lawful and unlawful work is absolutely necessary."[42]

It was announced, in sum, that "* * * revolutionaries who are unable to combine illegal forms of struggle with every form of legal struggle are very bad revolutionaries" ("'Left-Wing' Communism: An Infantile Disorder," Ex. 9, p. 76, R. 144). And opposition "in principle" to underground or illegal work, and "an unwillingness to understand the absolute necessity for a Communist Party of combining legal with illegal work" was in fact a sufficient ground for expulsion from the Party and liquidation of such opposition ("The 4th National Convention, Workers (Communist) Party of America," (1925) Ex. 12, p. 94, R. 241).[43]

The advocacy of general illegal conduct was accompanied by advocacy of particular types of illegality. The Communist Party was instructed to

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[42] See "Programme of the Communist International" (Ex. 6, p. 83, R. 109), which advises that there be "* * * every day organizational work in connection with this [the struggle against the danger of imperialist wars], in the course of which work legal methods must unfailingly be combined with illegal methods." See also Ex. 9, pp. 43–44, R. 144; Ex. M, p. 12, R. 465; Ex. 11, p. 64, R. 212 ("The revolutionary will accept a reform to unite a legal with an illegal action, to dissimulate the progress of clandestine work * * * The reformist on the contrary will accept reforms in order to rest on his laurels, will denounce all illegal work * * *").

[43] Similarly the Socialists were condemned for advising workers to "rely" on the laws and "to remain within legal limits prescribed for them by the ruling class" ("Why Communism?" Ex. 18, p. 29, R. 166).

arouse workers to "mass violation" of an injunction "whenever and wherever an injunction is issued by courts against strikers" (Ex. 12, p. 107, R. 241). Communists who achieve public office were advised to distribute arms to revolutionary workers ("Acceptance Speeches" (1928) Ex. 14, p. 8, R. 255). In the literature relating to the period here in question, the unlawful tactics were particularly to be directed toward the government's armed forces:

> Only the most reactionary petty bourgeoisie, by whatever high-sounding "democratic" or pacifist phrases it might disguise its ideas, can dispute this fact or the necessary conclusion; an immediate formation by all lawful Communist parties of unlawful organizations for systematic unlawful work, for their complete preparation at any moment to thwart any steps on the part of the bourgeoisie. It is especially necessary to carry on unlawful work in the army, navy and police * * * ("Statutes, Theses and Conditions of Admission to the Communist International," Ex. 26, p. 19, R. 274, 835).

Refusal to participate in the necessary "persistent and systematic propaganda and agitation" in the army was "equal to treason to the revolutionary cause, and incompatible with affiliation with the Third International" (*ibid.*, p. 28), and this because "it is necessary, above all things, to undermine and destroy the army in order to overcome

the bourgeoisie" ("A B C of Communism," Ex. 16, p. 69, R. 187).[44]

Although he denied generally that he was not attached to the laws of the United States (R. 362), petitioner in his testimony did not specifically advert to the evidence adduced by the Government on the issue whether the Communist Party advocated the use of illegal means, other than force and violence, to achieve its objectives. He adduced no evidence tending or designed to negate the conclusion that resort to illegal means was a tactic prescribed by the Communist Party for its members.[45]

The Party used as textbooks in the classes organized by petitioner (*supra*, pp. 4–5) much of the literature which embodies the evidence relating to illegal activities. In particular, the educational program of the Young Workers League included "The Programme of the Young Communist International" (Ex. 10, R. 152; R. 147, 208), and during the period when petitioner was its educational

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[44] See also *supra*, p. 48, n. 34; cf. Ex. 12, p. 135, R. 241; Ex. 10, p. 46, R. 152. It seems clear that these activities relating to the armed forces urged by the Party would fall within the prohibitions of 40 Stat. 219, as amended, 41 Stat. 1359, 50 U. S. C. sec. 33; 41 Stat. 801, 10 U. S. C. secs. 1538, 1539.

[45] Art. X, Sec. 5 of the 1938 constitution of the Communist Party (Ex. 5, R. 84) provided that Party members found to be "advocates of terrorism and violence as a method of Party procedure" shall be expelled from the Party (R. 368).

director it included "'Left-Wing' Communism: An Infantile Disorder" (Ex. 9, R. 144; R. 89). Both these works explicitly called for combining legal with illegal activities (*supra*, pp. 55, 56).

It is submitted that the evidence on the issue of illegal activities, coupled with the evidence concerning the strict adherence which the Party required of its members (*supra*, pp. 29–45),[46] the evidence concerning petitioner's affirmative subscription to Communist principles (*supra*, pp. 6–8), and the evidence concerning petitioner's official position and activities in the Party (*supra*, pp. 4–6), compels the conclusion that petitioner advised, advocated, taught, and believed in, the violation of the law to achieve the communist objectives.

Since this conclusion is, therefore, fully warranted by the evidence, it follows that the district court's finding that petitioner was not, and had not behaved as, a person well disposed to the good order and happiness of the United States must remain undisturbed. For it seems plain that a person who either himself believes in, teaches or advocates, or who actively participates in an or-

[46] In addition to the general principles relating to the discipline demanded of Communist Party members, it is to be recalled that refusal to participate illegally in "propaganda" and "agitation" in the armed forces itself was "equal to treason to the revolutionary cause" (*supra*, p. 57), and that failure to recognize the necessity of engaging in general illegal activities was cause for expulsion from the Party (*supra*, p. 56).

ganization which believes in, teaches, or advocates resort to illegal tactics, not as isolated acts, but as a fixed policy, has neither behaved as, nor is in fact, a person well disposed to the good order and happiness of the country the violation of whose laws are thus encouraged. On this ground alone the decree cancelling petitioner's naturalization must be affirmed.

2. *The decree must be affirmed since the evidence establishes that the Communist Party and petitioner taught, advocated and believed in the overthrow of this Government by force and violence.*

The district court found that petitioner was not, and had not behaved as, a man attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same but was a member of and believed in and supported the principles of the Communist Party and related organizations which advised, advocated, and taught the overthrow of the Government, Constitution, and laws of the United States by force and violence (R. 48, 49). A large part of the evidence in the record was related to the issue whether the Communist Party and petitioner advised achievement of its ends by force and violence, or by peaceful means.

On this issue there are, as the court below observed (R. 917), "sharply conflicting views" in the record. The difficulty does not, in general, stem from an actual conflict of factual evidence; the

basic evidence on this issue is chiefly documentary. Rather, the conflict centers upon the proper and sensible interpretation of the communist principles as expressed in these documents.

Our argument, except for this issue, is based on programs and doctrines generally of unambiguous character, to which, as we endeavor to show, petitioner subscribed, and adherence to which caused his oath of allegiance and attachment at the time of naturalization to be false. On the issue of belief in or advocacy of violent overthrow of the Government, the dispute over the meaning of the evidence in the record raises questions which it is not necessary to consider if our other arguments are accepted. Those questions are: (a) whether naturalization may be revoked for membership in an organization which is found, on a reasonable view of the evidence, to have advocated, advised, and taught violent overthrow of the Government; (b) whether, in any event, the evidence supports the finding that petitioner subscribed to, or taught, this doctrine, and hence did not have the requisite allegiance and attachment at the time of naturalization.

Before discussing these questions we shall describe the pertinent evidence and the contentions with respect thereto.

In the fountain head of communist principles and doctrines, the "Manifesto of the Communist Party" (Ex. 7, R. 124), in whose general prin-

ciples petitioner testified he believed (R. 123), it was stated (p. 44):

> The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions."

The view that the Communists were to use force and violence to achieve their objectives was thereafter repeatedly advanced in their literature:

> We Communists say that there is one way to abolish the capitalist State, and that is to smash it by force. To make Communism possible the workers must take hold of the State machinery of capitalism and destroy it ("Why Communism?", (1933–1935) Ex. 18, p. 32, R. 166).
>
> The dictatorship of the proletariat is born not of the bourgeois state of things but of * * * the development of the proletarian revolution through violence ("The Theory and Practice of Leninism," (1924–1929) Ex. 11, pp. 30–31, R. 212).

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[47] Compare from the same work (pp. 20–21):

> Though not in substance, yet in form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all settle matters with its own bourgeoisie.
>
> In depicting the most general phases of the development of the proletariat, we traced the more or less veiled civil war, raging within existing society, up to the point where that war breaks out into open revolution, and where the violent overthrow of the bourgeoisie lays the foundation for the sway of the proletariat.

That which before the victory of the proletariat seems but a theoretical difference of opinion on the question of "democracy," becomes inevitably on the morrow of the victory, a question which can only be decided by force of arms ("Statutes, Theses and Conditions of Admission to the Communist International," (1923) Ex. 26, p. 15, R. 274, 835).

The working class cannot achieve the victory over the bourgeoisie by means of the general strike alone, and by the policy of folded arms. The proletariat must resort to an armed uprising (*id.*, p. 36).

The elementary means of the struggle of the proletariat against the rule of the bourgeoisie is, first of all, the method of mass demonstrations. Such mass demonstrations are prepared and carried out by the organized masses of the proletariat, under the direction of a united, disciplined, centralized Communist Party. *Civil war is war.* In this war the proletariat must have its efficient political officers, its good political general staff, to conduct operations during all the stages of that fight.

The mass struggle means a whole system of developing demonstrations growing ever more acute in form, and logically leading to an uprising against the capitalist order of the government. In this warfare of the masses developing into a civil war, the guiding party of the proletariat must, as a general rule, secure every and all lawful positions, making them its auxiliaries in the

revolutionary work, and subordinating such positions to the plans of the general campaign, that of the mass struggle (*id.*, p. 47)."[48]

"An oppressed class which does not endeavour to possess and learn to handle arms would deserve to be treated as slaves. We would become bourgeois pacifists or opportunists if we forget that we are living in a class society, and that the only way out is through class struggle and the overthrow of the power of the ruling class. Our slogan must be: 'Arming of the proletariat, to conquer, expropriate and disarm the bourgeoisie.' Only after the proletariat has disarmed the bourgeoisie will it be able, without betraying its historic task, to throw all arms on the scrap heap. This the proletariat will undoubtedly do. But only then, and on no account sooner" ("Programme of the Young Communist International," Ex. 10, p. 43, R. 152).

The tenet that the Communists must achieve their objectives only by force and violence and not by

[48] Compare the statement concerning Lenin's reply to the question whether the Communist Party's program should include nominating candidates for executive and administrative offices: "Comrade Lenin replied to us that in his opinion the action of Eichorn in the revolutionary crisis in Germany, in taking the post of the chief of police of the city of Berlin and utilizing that post to pass out arms to the workers of Berlin was the answer to our problem." "Acceptance Speeches," Ex. 14, p. 8, R. 255.

peaceful means was declared applicable to the United States as well as elsewhere:

> Marx's limitation with regard to the "continent" has furnished the opportunists and mensheviks of every country with a pretext for asserting that Marx admitted the possibility of a peaceful transformation of bourgeois democracy into proletarian democracy, at least [in] some countries (England and America). Marx did in fact recognize the possibility of this in the England and America of 1860, where monopolist capitalism and Imperialism did not exist and where militarism and bureaucracy were as yet little developed. But now the situation in these countries is radically different; Imperialism has reached its apogee there, and there militarism and bureaucracy are sovereign. In consequence, Marx's restriction no longer applies ("The Theory and Practice of Leninism," Ex. 11, p. 32, R. 212. Cf. "The State and Revolution," Ex. 8, p. 26, R. 129).

So integral was the principle of the utilization of force and violence that the Communists sharply distinguished themselves from, and strongly denounced, other groups whose objectives might, in general, coincide with those of the Communists, but who subscribed to the belief that the means are to be peaceful:

> Fifth, in the same work of Engels, * * * there is also a disquisition on the nature of a violent revolution; and the historical ap-

preciation of its role becomes, with Engels, a veritable panegyric of a revolution by force. This, of course, no one remembers. To talk or even to think of the importance of this idea, is not considered respectable by our modern Socialist parties, and in the daily propaganda and agitation among the masses it plays no part whatever. Yet it is indissolubly bound up with the "withering away" of the state in one harmonious whole. Here is Engels' argument:

"That force also plays another part in history (other than that of a perpetuation of evil), namely a *revolutionary* part; that as Marx says, it is the midwife of every old society when it is pregnant with a new one; that force is the instrument and the means by which social movements hack their way through and break up the dead and fossilized political forms—of all this not a word by Herr Duehring. Duly, with sighs and groans, does he admit the possibility that for the overthrow of the system of exploitation force may, perhaps, be necessary, but most unfortunate if you please, because all use of force, forsooth, demoralizes its user! And this is said in face of the great moral and intellectual advance which has been the result of every victorious revolution! * * * And this turbid, flabby, impotent, parson's mode of thinking dares offer itself for acceptance to the most revolutionary party history has ever known." ("The State and Revolution," Ex. 8, pp 14–15, R. 129.)

> The necessity of systematically fostering among the masses this and only this point of view about violent revolution lies at the root of the whole of Marx's and Engels' teaching, and it is just the neglect of such propaganda and agitation both by the present predominant Social-Chauvinists and the Kautskian schools that brings their betrayal of it into prominent relief ("The State and Revolution," Ex. 8, p. 16, R. 129).[49]

Nor were force and violence advocated simply as a necessary means; they were also urged for their purgative effect:

> Hence, revolution is not only necessary because there is no other way of overthrow-

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[49] The Socialists are also condemned for failure to advocate force and violence. See Ex. 14, p. 37, R. 255; Ex. 7, p. 40, R. 124. See also the severe criticism by Engels of the Anti-Authoritarians, quoted in "The State and Revolution" (Ex. 8, p. 44, R. 129):

> These gentlemen, have they ever seen a Revolution? Revolution is an act in which part of the population forces its will on the other parts by means of rifles, bayonets, cannon, i. e., by most authoritative means. And the conquering party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries. Had the Paris Commune not relied on the authority of the armed people against the bourgeoisie, would it have lasted longer than a single day? May we not rather censure the Commune for not having made sufficient use of this authority? And so, either the Anti-Authoritarians themselves do not know what they are talking about, in which case they merely sow confusion; or they do know what they are talking about, in which case they are betraying the proletariat. In either case they serve only the interests of reaction.

> ing the *ruling* class, but also because, only in the process of revolution is the *overthrowing* class able to purge itself of the dross of the old society and become capable of creating a new society ("Programme of the Communist International," Ex. 6, p. 52, R. 109).[50]

For reform was said to be "only an accessory" of the revolution, which was the primary objective:

> With the Reformist, reform is everything, whilst in revolutionary work it only appears as a form. This is why with the reformist tactic under a bourgeois government, all reform tends inevitably to consolidate the powers that be, and to weaken the revolution.
>
> With the revolutionary, on the contrary, the main thing is the revolutionary work and not the reform. For him, reform is only an accessory of revolution ("The Theory and Practice of Leninism," Ex. 11, p. 64, R. 212).

Petitioner did not, in general, repudiate the Government's evidence[51] on the issue of force and vio-

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[50] Compare Engels' estimate of Duehring, quoted in Lenin's "The State and the Revolution" (Ex. 8, p. 15, R. 129), *supra*, p. 66.

[51] Petitioner did, however, testify that any literature conflicting "with the basic principles" of the 1938 communist constitution was not representative of the Party view or binding on the members (R. 364, 365, 368, 836–837). For a discussion of this contention, see *infra*, pp. 73–76. In any event, the 1938 constitution itself embodied the principles

lence, nor did he attempt to negative the conclusion that he and the Communists regarded force and violence as the decisive factor in achieving their objectives. Petitioner did testify that Marx, Engels, and Lenin believed that under certain conditions and in certain countries, it was possible to achieve Communism by peaceful means (R. 375, 868; cf. R. 528, 720, 754–755). He further testified that the Communists hoped to attain their ends peacefully, but that although "amending the Constitution may provide for that, * * * that is, as I see it, a purely academic question" because the "governing group in power today" will not

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of force and violence. Although we stated in our brief in opposition to the petition for certiorari (p. 7) that there was nothing inconsistent in the 1938 constitution with the achievement of the communist objectives by peaceful means, further consideration leads us to the belief that this statement was in error. The constitution announced that the Party advocated "the establishment of Socialism according to the scientific principles enunciated by the greatest teachers of mankind, * * * embodied in the Communist International" (R. 15). We have set out in the text the views of the teachers named in the constitution ("Communist Manifesto," Ex. 7, R. 123; "The State and Revolution," Ex. 8, R. 129, and " 'Left-Wing' Communism: An Infantile Disorder," Ex. 9, R. 144 (see also Ex. L, R. 464, and Ex. P, R. 474); "The Theory and Practice of Leninism," Ex. 11, R. 212) and of the Communist International ("Statutes, Theses and Conditions of Admission," Ex. 26, R. 274, 835; "Programme of the Communist International," Ex. 6, R. 109; and "Programme of the Young Communist International," Ex. 10, R. 152), relating to the use of force and violence.

permit the institution of a "socialistic system" in the United States (R. 897, 375; cf. R. 867).[52]

In the main, however, petitioner's evidence was directed toward establishing that the communist philosophy is properly to be interpreted not as advocating, i. e., desiring, force and violence as an

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[52] Petitioner's skepticism concerning the possibility of achieving Communism by peaceful means in the United States coincides with the doubts expressed by other spokesmen (cf. R. 721; see *supra*, pp. 64–65).

Petitioner suggests, however, that the right to resort to revolution is entirely consistent with accepted American principles, and that it is a right embodied in the Declaration of Independence and emphasized by Jefferson and Lincoln (R. 372, 396–397, 885; see *infra*, p. 99). But the revolution which petitioner contemplates bears no relation to the revolution approved by the Declaration, Jefferson and Lincoln. The Declaration of Independence enunciates the right of revolution of the people "whenever any form of government becomes destructive of these ends"—and "these ends" of Government which the Declaration describes are to secure "certain unalienable rights" which "are endowed by" the Creator. Revolution is, therefore, justified in these circumstances. But the record in this case is barren of any suggestion that petitioner so circumscribed the right of revolution: rather, he believed in the right of a minority (see *infra*, p. 93, n. 75) to overthrow any government which rejected the materialistic determinism advocated by Marx. Indeed, the very government which petitioner sought to create by revolution would be "destructive of these ends": The traditional freedoms embodied in the Bill of Rights were to be denied "the bourgeoisie"; "class enemies" were to be deprived of their "political rights"; and minorities were to lose their rights of representation (see *infra*, p. 95). For the purposes of the Communist Party and its members were stated to be "purposes utterly antagonistic to the purposes for which American democracy, so-called, was formed" (Ex. 14, p. 7, R. 255).

initial means to achieve its realization, but only as a prediction that force and violence would be necessary to defend the workers against capitalists' refusal to accept communism. Petitioner testified that such was his view of the communist philosophy (R. 375, 868–869, 897). Other evidence, embodied in the testimony of expert witnesses (R. 543, 562, 577–578, 618, 638, 663, 754–755, 757) and in recent statements of Communists (R. 427–429, 445–448, 455–456), similarly supported the view that the communist attitude toward force and violence is not one of advocacy, in the sense that they desire it, but simply one of preparedness for the necessarily inevitable use of such means.

Broadly stated, the interpretation concerning force and violence for which petitioner contends is as follows: While it may be preferable and desirable to attain the ends of the Communist Party by peaceful means (R. 372–375, 640–641), attainment by such means is impossible. The impossibility derives from the fact that the "ruling class" will not permit the achievement of the communist ends. Instead, they will use every means of force and violence to resist the Communists (R. 529, 539, 543, 562, 663).[53] Accordingly, the Communists must, in turn, meet the force and violence of the "exploiters" or the "ruling class" by their own force and violence (R. 200, 414–416, 539, 562, 663). But the

[53] Some of the excerpts submitted in evidence by the Government also seem to support this interpretation. Cf. R. 190.

"first user[s]" of violence is the "capitalistic government" (R. 200). This sequence of events the Communists do not advocate; it is simply their prediction based on historical experience (R. 372–375, 407–414, 423, 529, 539, 876–877, 897).[54]

A corollary to the distinction between advocacy and prediction is that the very existence of the State presupposes a present oppression of the dominated class by force and violence (R. 132, 394, 864, 865, 866; Ex. 6, p. 29, R. 109; Ex. 8, pp. 5, 13, 63, R. 129; Ex. 13, p. 4, R. 249; Ex. 16, p. 75, R. 187). Democracy itself is "an organization for the systematic use of *violence* by one class against the other" (Ex. 8, p. 59, R. 129). Therefore, even the *present* enforcement of a Government's laws, coupled with the force and violence which the Government is in a position to use through its armed forces and

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[54] This view is, perhaps, most vividly presented in a quotation from John Strachey, "The Coming Struggle for Power" (1935), read into the record by petitioner (R. 414–415):

> "If I might use a simile I might say that when sitting on the seashore, I might take the view that the tide would come up and wet my clothes but this would not mean that I should favor or advocate the coming up of the tide."
>
> I believe that this difference between *predicting* that the abolition of the capitalist system will involve violence, and *advocating* or *desiring* such violence, is a distinction of primary importance. For no one could deny that communists do predict that violence will take place. But such prediction does not mean that they have ever dreamt of advocating or desiring violence.

police, constitute a *present* use of force and violence by capitalism. And accordingly, force and violence have already been initiated by the State, and "counterforce" is justified [55] (R. 375).

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[55] Compare "Why Communism?," Ex. 18, p. 61, R. 166:

"But this is force and violence," somebody will contend. "Don't you Communists know that the use of force and violence is wrong?" We reply to this first, that if being a "red-blooded American" means anything, it means that you must not take punishment lying down, that you must offer resistance; secondly, that it is not the workers but the capitalists and their State that start the use of force and violence. When you wish to stay on in your place of work and the employer who wants you "fired" sends for the watchman and has you thrown out, it is he that uses force. When you wish to stay on in the apartment of a house you and the like of you have built, and the landlord calls the sheriff to evict you, it is he that uses force. When you go out on a demonstration in the open in front of a governmental office and the government sends the police and armed thugs to beat you up and disperse you, it is the government that is using force. When you are thrown in jail for refusing to transport ammunition in time of war, it is the government that is using violence against you. Force and violence are the daily bread of the exploiters and their government in dealing with the exploited. Force and violence are the very essence of the State. When the warehouses are bulging with foodstuffs you and the like of you have produced while you, the hungry, are kept from them by the armed force of watchmen and police, force and violence are used against you. How can you live and breathe if you do not resist? How can you defend your fundamental interests if you do not defy boss restrictions? To defy boss restrictions, to resist the attacks of the enemy class is just as natural for the working class as it is for a red-blooded human being not to take punishment lying down.

(a) Whatever question there may be in respect of petitioner's personal beliefs concerning force and violence, it seems clear that the concurrent findings of the courts below (R. 49, 917) that the Communist Party and related organizations of which petitioner was a member or with which he was affiliated, advised, advocated, and taught the overthrow of the Government by force and violence are not erroneous. The evidence relating to this issue (*supra*, pp. 61–68) plainly supports, if it does not compel, the interpretation that force and violence are advocated; indeed, we do not understand that petitioner contends otherwise although he does contend that a different interpretation is the correct one and the one to which he subscribes.

Article X, Section 5, of the 1938 constitution of the Communist Party (Ex. 5, R. 84) provides for the expulsion of members "found to be * * * advocates of terrorism and violence as a method of Party procedure, * * *" (R. 28). Petitioner testified (R. 364–365, 368) that this constitution is the only official expression of the principles of the Party, and that all other literature or documents inconsistent with it are, therefore, not binding on the Party.[56] But as we have noted (*supra*, p. 68, n. 51), the constitution also

[56] Petitioner testified only that the Party operated under no official written program until 1938 (R. 364–365, 836–837; but cf. R. 861). His conclusion was based on hearsay (R. 861) and in answer to a question by the court he admitted that prior to 1938 the Party had in fact officially adopted resolutions at certain conventions (R. 837). That there

incorporates, by reference, the principles of Marx, Engels, and Lenin, "embodied in the Communist International"; these principles, as we have seen, themselves included the advocacy of force and violence (*supra,* pp. 61, 62, 65–66, 68). But in any event, we submit that petitioner's statement that all literature inconsistent with the 1938 constitution is not binding on the Party does not foreclose the issue.

The constitution was adopted in 1938, eleven years after petitioner was naturalized. It is, therefore, at most only slight evidence of the principles of the Communist Party and its predecessors in 1927 and the relevant prior years. And it is not persuasive. The documents upon which the Government relies in respect of the issue of force and violence are contemporaneous with petitioner's probationary period and naturalization. They

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was no official program at all for almost 20 years is scarcely credible in the light of the communist principle that there must be a program:

> What is a Program?
>
> Every party pursues a definite end, be it a party of landlords or capitalists, be it a party of workers or peasants—the same thing holds. Every party must have its aims, otherwise it is not a party * * *.
>
> *All those aims which a party strives to realize, while representing the interests of its class, constitute a party program.* In the program is therefore shown what a certain class aspires to. In the program of the Communist Party is consequently shown what the workers and poor peasants strive for. A program is a most important thing for a party ("A B C of Communism," Ex. 16, pp. 8–9, R. 187).

are, in addition, on their face, official programs and expressions, or were officially circulated and utilized as textbooks by the Communist Party and related communist organizations (*supra*, pp. 23–28; see Appendix C, *infra*, pp. 142–151). Further, the force of the 1938 constitution is doubtful in the light of the Party's previously expressed principle to engage in opportunistic deviations in position, and to dilute its slogans and programs, where circumstances demanded it:

> The Bolshevisation of our Party must accomplish four general purposes:
>
> * * * * *
>
> (b) It must develop within the Party and its membership an ability for maneuvering and campaigning in accord with the momentary needs and the possibilities of the class struggle.
>
> A Communist Party must be able to maneuver and to adapt its tactics at all times to changing conditions. Changing conditions in the proletarian struggle for emancipation must not bring confusion into the ranks of the Party but must be met by a Leninist appraisal of the new facts and if necessary by a speedy change of the methods of struggle "The 4th National Convention, Workers (Communist) Party of America" (1925), Ex. 12, p. 91, R. 241).[57]

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[57] Compare "'Left-Wing' Communism: An Infantile Disorder." Ex. 9, p. 52, R. 144:

> To carry on a war for the overthrow of the international bourgeoisie, which is a hundred times more diffi-

In these circumstances, we submit that even were the 1938 constitution inconsistent with advocacy of force and violence, it could not destroy the force of the evidence adduced by the Government to establish that the Party, between 1922 and 1927, advocated force and violence.

It cannot be gainsaid that language used in some communist literature in respect of force and violence is susceptible of an interpretation more rhetorical than literal. See Anderson, J., in *Colyer* v. *Skeffington*, 265 Fed. 17, 59 (Mass.), reversed *sub nom. Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1).[58] But since the Party saw fit to use explosive words of general application which

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cult, prolonged, and complicated than the most stubborn of ordinary wars between states; and to refuse beforehand to maneuver, to utilize the conflict of interests (even though temporary) among one's enemies; to refuse to temporise and compromise with possible (even though transient, unstable, vacillating, and conditional) allies—is not this ridiculous in the extreme? Is it not as though, in the difficult ascent of an unexplored and heretofore inaccessible mountain, we were to renounce beforehand the idea that at times we might have to go in zig-zags, sometimes retracing our steps, sometimes giving up the course once selected and trying various others?

See also Ex. 9, pp. 50, 58, R. 144; Ex. 11, pp. 57, 60, R. 212; Ex. L., pp. 12, 14–15, R. 464. On the necessity of diluting the Party slogans for popular consumption, see "Programme of the Communist International," Ex. 6, p. 79, R. 109.

[58] Compare Evatt, J., *obiter*, in *The King* v. *Hush, Ex parte Devanny*, 48 C. L. R. 487, 516–518 (H. C. Australia, 1932).

in their ordinary sense fairly import that the Party believed in, advocated, and taught the overthrow of this Government by force and violence when appropriate opportunity presented, there is no occasion, at least where the issue is the principles of the Party itself, for a court to refine and construe the language so as to reach a different result." Cf. *United States ex rel. Abern* v. *Wallis*, 268 Fed. 413, 413–414 (S. D. N. Y.); *Antolish* v. *Paul*, 283 Fed. 957, 959 (C. C. A. 7); *Kenmotsu* v. *Nagle*, 44 F. (2d) 953, 955 (C. C. A. 9), certiorari denied, 283 U. S. 832.

Comparable evidence has, without any exception insofar as we have been able to find, been held to sustain the same findings which were made by the courts below in respect of force and violence.[60] *In*

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[59] We urge at a later point in this brief (*infra*, pp. 88–93) that even the interpretation in which petitioner testified he believed, and which he testified was the proper interpretation of the communist literature, itself constitutes the advocacy of force and violence. If this is so, *a fortiori* the conclusion of the courts below that the Party advocated force and violence is correct.

[60] Some cases apparently go to the extent of holding that even in the absence of evidence concerning force and violence, the Communist Party will as a matter of law be presumed to advocate force and violence. *United States ex rel. Yokinen* v. *Commissioner*, 57 F. (2d) 707 (C. C. A. 2), certiorari denied, 287 U. S. 607; *United States* v. *Perkins*, 79 F. (2d) 533 (C. C. A. 2); *United States ex. rel. Fernandas* v. *Commissioner of Immigration*, 65 F. (2d) 593 (C. C. A. 2); *United States* v. *Reimer*, 79 F. (2d) 315, 316 (C. C. A. 2); *Ungar* v. *Seaman*, 4 F. (2d) 80, 81 (C. C. A. 8); *Ex parte Jurgans*, 17 F. (2d) 507, 511 (Minn.), affirmed.

re Saderquist, 11 F. Supp. 525, 526–527 (Me.), affirmed *sub nom. Sorquist* v. *Ward*, 83 F. (2d) 890 (C. C. A. 1); *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103; *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1); *United States* v. *Curran*, 11 F. (2d) 683 (C. C. A. 2), certiorari denied *sub nom. Vojnovic* v. *Curran*, 271 U. S. 683; *Kenmotsu* v. *Nagle*, 44 F. (2d) 953 (C. C. A. 9), certiorari denied, 283 U. S. 832; *Sormunen* v. *Nagle*, 59 F. (2d) 398 (C. C. A. 9); *Saksagansky* v. *Weedin*, 53 F. (2d) 13 (C. C. A. 9); *Branch* v. *Cahill*, 88 F. (2d) 545 (C. C. A. 9); *Antolish* v. *Paul*, 283 Fed. 957 (C. C. A. 7); *Ex parte Vilarino*, 50 F. (2d) 582 (C. C. A. 9); *Kjar* v. *Doak*, 61 F. (2d) 566 (C. C. A. 7); *Berkman* v. *Tillinghast*, 58 F. (2d) 621 (C. C. A. 1); *United States* v. *Smith*, 2 F. (2d) 90 (W. D. N. Y.); *United States ex rel. Abern* v. *Wallis*, 268 Fed. 413 (S. D. N. Y.).[61] Cf. *Rex* v. *Buck*, [1932] 3 D. L. R.

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25 F. (2d) 33 (C. C. A. 8); *United States ex rel. Fortmueller* v. *Commissioner of Immigration*, 14 F. Supp. 484, 487 (S. D. N. Y.); *Murdock* v. *Clark*, 53 F. (2d) 155, 157 (C. C. A. 1); *Wolck* v. *Weedin*, 58 F. (2d) 928 (C. C. A. 9); *contra*, *Ex parte Fierstein*, 41 F. (2d) 53, 54 (C. C. A. 9).

[61] The only case which we have found which has held that the evidence was insufficient to sustain the finding that the Communist Party advocated the overthrow of the Government by force and violence is *Ex parte Fierstein*, 41 F. (2d) 53 (C. C. A. 9). But the only supporting evidence in that case was the bare statement of the arresting detective that the Party did so advocate (pp. 53–54). No communist literature or other evidence was in the record in that case (*id.*). Cf. *Strecker* v. *Kessler*, 95 F. (2d) 976, 977 (C. C. A. 5), affirmed, with modification, on other grounds, 307 U. S. 22.

97 (Ont. Ct. App., 1932); *Re Worozcyt et al.*, 58 Can. Cr. Cas. 161 (Sup. Ct. Nova Scotia, 1932).

If, as we contend, the finding of the district court that the Communist Party advocated the overthrow of the Government by force and violence must remain undisturbed, we submit that under the pertinent statutes in effect when petitioner acquired his citizenship the decree cancelling his certificate must be affirmed on the basis of that finding alone and irrespective of petitioner's personal beliefs.

At and before the time petitioner was naturalized, he was subject to deportation. The Immigration Act (8 U. S. C., sec. 137; 40 Stat. 1012, 41 Stat. 1008) in effect during petitioner's probationary period required that aliens be deported if found to be members of or affiliated with any organization which (1) believes in, advises, advocates, or teaches the overthrow by force and violence of this Government, or (2) "writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or [which] has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter" advising, advocating, or teaching the overthrow of the Government by force and violence (Appendix A, *infra*, pp. 131–132).

It is clear that petitioner fell within this class of deportable aliens if, as we contend, the finding

that the Communist Party advocated force and violence is correct. It is further clear that, since the Immigration Act required the deportation of any alien who was found to be a member of an organization which distributed, circulated, or published *any* literature which advocated force and violence, petitioner was also deportable on this ground: It can scarcely be questioned that at least *some* of the literature which we have discussed above (*supra*, pp. 61–68) may reasonably be interpreted as having advocated force and violence.[62]

Since petitioner, up to the very moment of his naturalization, was deportable on these grounds, he was disqualified from citizenship. The naturalization laws must be read in the light of the deportation laws, and the requirements of the latter may fairly be imported into the former. Cf. *United States* v. *Thind*, 261 U. S. 204, 215.[63] It would seem plain that Congress did not intend to grant citizenship to an alien whom it declared to be deportable on political grounds; if an alien is subject to deportation because of his political affiliations which are deemed to disqualify him from continued residence in the United States, *a fortiori*

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[62] This literature was "published," "circulated" and "distributed" by the Communist Party; and such publication, circulation and distribution occurred during the pertinent period. See Appendix C, *infra*, pp. 142–151.

[63] See also *United States* v. *Kreticos*, 40 F. (2d) 1020, 1023, (App. D. C.); cf. *Brymer* v. *United States*, 83 F. (2d) 276 (C. C. A. 9); *In re Demanis*, 21 F. (2d) 876 (E. D. Mich.).

he cannot be entitled to the higher privilege of citizenship. To conclude otherwise is to hold that Congress has constructed the laws governing aliens in such a manner as to require the perpetuation of error.[64]

(b) Independently of our contention that petitioner was disqualified from obtaining citizenship merely by reason of his membership in an organization which advocated the overthrow of this Government by force and violence, petitioner's own beliefs in respect of force and violence disqualified him. Petitioner's position (Br. 31–35) is that whatever may be the court's holding relating to the interpretation of the communist material bearing on force and violence, he did not believe that the Party advocated force and vio-

[64] The Nationality Code of 1940 (Act of October 14, 1940, c. 876, Title I, sec. 305, 54 Stat. 1141; 8 U. S. C. 705 (b)) expressly provides that aliens who are members of organizations which advocate the overthrow of the Government by force and violence are thereby disqualified from obtaining citizenship. It cannot be inferred, however, that Congress intended to change the law in this respect by passage of the Nationality Code, or that it indicated that until 1940, such aliens were nevertheless entitled to citizenship. The legislative history of the Code shows clearly that it was intended primarily to codify existing law. See H. Rep. No. 2396, 76th Cong., 3d Sess. (1940), p. 1; see also 86 Cong. Rec. 11939, 11942, 11947, 11949. And at the time of the enactment of the Code, Congress had before it the uniform decisions of the courts that such aliens are deportable (see cases cited at pp. 78–79, *supra*), and a *fortiori* are not entitled to be naturalized (see pp. 79–81, *supra*).

lence; nor did he advocate force and violence.[65] On the contrary, according to petitioner's testimony, his personal belief was only that force and violence were inevitable (see *supra,* pp. 69–71).

The evidence in the record, however, supports the conclusion that petitioner during the relevant period did, in fact, subscribe to the interpretation concerning force and violence for which the Government contends and not to the interpretation for which he now contends. To which of the interpretations petitioner subscribed is, basically, an issue of fact. Several factors support the rejection of petitioner's testimony.

The first is the same factor which casts doubts on the 1938 Communist constitution (*supra,* pp. 73–76): the principle, then prescribed by the communist literature, of opportunistic deviation in tactics and dilution of expressed views where and as the circumstances demanded. This principle can fairly be imputed to petitioner, since it was most clearly announced in "'Left-Wing' Communism: An Infantile Disorder" and in "The

[65] The problem of varying interpretations is limited to the issue of force and violence since, in the light of the exhibits embodying Strachey's writings, and the testimony of Professors Brown and Thompson, it seems clear that the communist literature has been given more than one interpretation only on this issue. There is no dispute about the *meaning* of the literature in respect of the other issues, and for reasons stated at pertinent points, petitioner must be held to have subscribed to the principles expressed in such literature.

4th National Convention, Workers (Communist) Party of America" (*supra,* pp. 75–76). The former volume was one familiar to petitioner (R. 143) and was one of the texts used in the educational program of the Young Workers' League during the time petitioner was educational director of the League (R. 89). The Report of the Fourth National Convention was an official publication, distributed by the Party as an official document (R. 240–241). It embodied the resolutions and principles formulated at the convention at which petitioner was present (R. 97).

Second, the very documents which most unequivocally advocated force and violence were those written and circulated during petitioner's membership in the Communist Party and related organizations prior to 1927, or very shortly thereafter. Thus "The State and the Revolution" (Ex. 8, pp. 14–16, R. 129) (*supra,* pp. 65–67) was published in 1924 (R. 128); "The Theory and Practice of Leninism" (Ex. 11, pp. 30–33, 64, R. 212) (*supra,* pp. 62, 65, 68) was published between 1924 and 1929 (R. 159); "Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, pp. 15, 36, 47, R. 274, 835) (*supra,* pp. 63–64), adopted in 1920 by the Second Congress of the Communist International, was issued by the Workers' Party of America in 1923 (*id.,* foreword, inside front cover) and embodied the precepts of the Workers' (Communist) Party in 1925 (Ex. 12, pp. 137–138, R. 241); "Programme of the Young Com-

munist International" (Ex. 10, p. 43, R. 152) (*supra*, p. 64) was published in 1929 (*id.*, title page); and "Programme of the Communist International" (Ex. 6, p. 52, R. 109) (*supra*, pp. 67–68) was adopted in 1928 and published in 1929 (Ex. 6, p. 4, R. 109; see R. 833–834).[66] In addition, petitioner's connection with much of this contemporary literature was direct and not simply that of a passive or rank and file Party member. During their formulation, publication, and distribution, petitioner was an officer of the Party or related organizations (*supra*, pp. 4–5); many of these works were used as textbooks in classes of the Young Workers' League of which petitioner was educational director (R. 88–89; see also *infra*, Appendix C, pp. 145–151).

Third, petitioner's testimony was not without contradiction and unfounded explanations. For example, he testified at one time that the Party was,

[66] The general lack of contemporaneity of the documents upon which petitioner relied to establish the interpretation for which he contended is in marked contrast (see *supra*, p. 70). And it is to be noted that Professors Brown and Thompson, whose testimony in another proceeding was introduced by petitioner in this case, both confined themselves to the issue of the philosophy and theory of "true" Marxism and did not deal with the Communist Party's strategy or tactics (R. 561, 759–762, 784), nor had they read many of the communist documents relating to or issued during the relevant period (R. 555–560, 759, 761). Professor Thompson expressly qualified his statement by testifying that, "I do not presume to know or to say whether the Communist Party of the United States adheres to" the views of Marx, Lenin, and Engels on violence (R. 757; cf. R. 762, 784).

until 1938, without a constitution or program at all (R. 861); elsewhere, he testified that it was without a "written" constitution (R. 364–365); he testified that under communism all classes would disappear (R. 394), and, on the other hand, that the Party did not want to abolish all classes (R. 864–865); he testified that in a passage from "The Theory and Practice of Leninism" (Ex. 11, pp. 30–31, R. 212) the author contemplated application only to Russian conditions (R. 879), while the context of the passage (Ex. 11, pp. 27–36, R. 212) indicates that it was not so limited. And a reading of his testimony warrants the conclusion that he tended toward evasion (e. g., R. 868, 878–879, 880, 881–882).

In any event, the district court had an opportunity to observe his demeanor. In the light of all the circumstances, it was reasonable for the district court to disbelieve petitioner's testimony on the issue of his beliefs relating to the advocacy of force and violence and to conclude that he had in fact subscribed to the interpretation which he disavowed at the hearing, and which did embody advocacy of force and violence.

(c) In any event, even if petitioner did *subscribe* to the interpretation for which he contends, he nevertheless *taught* a different interpretation which embodied force and violence. Our contention relating to this branch of the issue is simply that whatever the "true" theoretical interpretation of communist principles on force and violence, pe-

titioner cannot escape responsibility for words whose ordinary import is the advocacy of force and violence.

In this view of the case, what petitioner thought the literature meant is immaterial. It is scarcely open to debate that the literature during the *relevant period can reasonably be construed* as inflammatory, and unmarked by any apparent distinction between advocating and predicting force and violence. The audience for whom the literature was intended was not one likely to make the logical and metaphysical distinctions here sought to be drawn. The audience was presented with such clauses as "smash" the State "by force" (Ex. 18, p. 32, R. 166); the victory of the proletariat "can only be decided by force of arms" (Ex. 26, p. 15, R. 274, 835); "the proletariat must resort to an armed uprising" (*id.* p. 36); "Arming of the proletariat to conquer, expropriate and disarm the bourgeoisie" (Ex. 10, p. 43, R. 152). The audience is urged to "revolution" and revolution is defined as—

> an act in which part of the population forces its will on the other parts by means of rifles, bayonets, cannon, * * * (Ex. 8, p. 44, R. 129).

Even were it assumed that these phrases are directed toward the defensive necessity of using force and violence, it is difficult to believe that those to whom the literature was directed would interpret the literature as anything but advocacy

of force and violence. Nowhere in the literature of the period in question is there advice to the contrary. Consequently, whatever petitioner's unexpressed mental reservations, it cannot be said that he *behaved* as a person attached to the Constitution or one well disposed to the good order and happiness of the United States.[47] Petitioner was an active participant in and leader of the Party; further, he participated in the formulation of some, and in the dissemination and use of much, of this literature. In these circumstances it must be concluded that his behavior fell short of the statutory standards.[48]

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[47] Compare *United States ex rel Abern* v. *Wallis*, 286 Fed. 413, 413–414 (S. D. N. Y.):

> * * * Since the party has seen fit to use words of general application, which in their popular and ordinary sense may fairly import, and which are appropriate to the use of, force and violence, and which have been found to have that meaning, there is no obligation upon the court to refine and construe the language so as to reach a different result. If force and violence be not within the contemplation of the party, it would be a simple matter to have the absence of such thought clearly appear. As it is, the language used would seem designed to mean all things to all men, and to be fairly susceptible of meaning, even though it does not unequivocally declare in favor of, force and violence. * * *

[48] It would seem plain that petitioner cannot disavow the natural import of the literature itself (see *supra*, pp. 61–68, *infra*, Appendix C), irrespective of his personal beliefs concerning its proper interpretation. Particularly is this so in the light of the fact that one of the very tests of conformance to communist principles was whether the indi-

(d) Independently of the three separate contentions we have advanced relating to the issue of force and violence, it is our position that, even if we accept petitioner's evidence that, during the period in question, the literature was properly to be interpreted in the manner for which he contends and that, further, this interpretation represented his personal views, such interpretation itself constituted the advocacy of force and violence.

Broadly stated, the view to which petitioner testified he subscribed is that force is not advocated, *i. e.*, desired, but simply recognized as inevitable (*supra*, p. 70). But analysis of this view, as expressed by petitioner himself and by Professors Brown and Thompson, when read in the light of other evidence, warrants the conclusion that it also constitutes, although perhaps in somewhat less direct terms, the advocacy of, belief in, and teaching of force and violence. The difference, in brief, between the interpretation for which the Government contends and that to which petitioner insists he adhered, is one of phraseology, not of substance.

The views which petitioner advanced in respect of force and violence were not simply abstract and purely philosophical. While the origin of the views may lie in the philosophy of economic or dia-

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vidual believed force and violence were to be used. It was for persons who, while in general advocating communistic ends, nevertheless omit emphasis of the element of force and violence, that the Party reserved some of its most severe official condemnation (*supra*, pp. 66–67).

lectic materialism, that philosophy was shortly translated by Marx and Engels into a program of political action (see Appendix B, *infra,* p. 134). Similarly, the Communist Party and related organizations were unquestionably not groups devoted to historical and philosophical contemplation, but rather, as is apparent from their slogans, political activities, resolutions, and platforms, were organizations looking toward and advocating specific action.

It is for this reason that the contention that the Communists no more advocate force and violence than they advocate the rising of the tide (*supra,* p. 71, n. 54) is misconceived. The essential distinction is between the necessary *passivity* of man to the rising tide, and the vital *activity* expected and proposed by the Communist Party. The tide rises willy-nilly; the Communists, on the other hand, were actively to *create,* and to advocate the creation of, the situation which was to give rise to their own use of force and violence, whether defensive or initial. In short, the communist principle adopted the familiar strategy that offense is the best defense.

For it was stated that the revolution would not occur through the forces of uncontrollable and inevitable economic evolution; ideologies must also play an active role (R. 679). It was in the realm of ideologies which stimulate the revolution that the communist program was to become effective; the Communists' program was to lay the founda-

tion and create the situation for revolution. To this end, they were obliged to engage in revolutionary activities of all kinds, preferably mass action.[69] To attract the worker to the revolutionary standard, "transitional slogans and partial demands corresponding to the concrete situation" were to be advanced by the Party but these "must be bent to revolutionary aim of capturing power and of overthrowing capitalist society" (Ex. 6, p. 79, R. 109). For—

> The task of the Party is to utilize these minor every-day needs as a *starting point* from which to lead the working class to the *revolutionary struggle for power* (*Ibid.*).

Everything which could be done to create the revolutionary situation was to be done; the Communists' duty "consists in accelerating the revolution, without provoking it artificially until sufficient preparation has been made" (Ex. 26, p. 13, R. 274, 835; see also Ex. 10, p. 44, R. 152; Ex. 9, pp. 73–74, R. 144; Ex. 11, p. 25, R. 212; Ex. 18, pp. 58–59, R. 166). Simple reform, however, was insufficient and secondary; the reform only "tends inevitably to consolidate the powers that be, and weaken the revolution" and accordingly, "the main thing is the revolutionary work and not the reform" (Ex. 11, p. 64, R. 212). Thus, too, the purpose of the

[69] Ex. 13, pp. 7, 15–26, 55, 105, R. 248; Ex. 26, pp. 18, 47–48, 52, R. 274, 835; Ex. 14, pp. 7–8, 11, 31, R. 255; Ex. 10, pp. 43–44, R. 152; Ex. 12, pp. 9–10, 13–14, 79, 93–95, 106, 147, R. 241; Ex. 18, pp. 43, 50–51, 58–59, R. 166; Ex. 15, pp. 2, 39–40, 62–64, R. 264; Ex. 27, p. 7, R. 276; Ex. 8, p. 32, R. 129; Ex. 6, pp. 65, 75, R. 109; Ex. 11, p. 55, R. 212.

Communist Party in respect of legislation was not constructive; rather the Communists—

> go to the law-making institutions, not to tinker them up for the benefit of the capitalists, but to be a monkey wrench in their machinery, preventing it from working smoothly on behalf of the masters (Ex. 18, p. 66, R. 166).[70]

Democratic elections were to be used "not in the sense of obtaining a maximum of votes, but in that of a revolutionary mobilization of the masses around the mottoes of the proletarian revolution" (Ex. 26, p. 48, R. 274, 835).[71] Ultimately, through these activities, when the nation is in the throes of an economic crisis or a war, the situation is "ripe."[72] This is the critical moment when the culminating point in the development of the revolutionary situation is reached and—

> To allow that opportunity to slip by and to fail to start rebellion at that point, means to allow the initiative to pass to the enemy and to doom the revolution to defeat (Ex. 6, p. 80, R. 109).[73]

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[70] To the same effect, see also Ex. 26, pp. 45, 52, R. 274, 835; Ex. 8, p. 32, R. 129.

[71] See also Ex. 27, p. 7, R. 276; Ex. 13, p. 55, R. 248; Ex. 15, pp. 39–40, R. 264; Ex. 14, p. 11, R. 255.

[72] Ex. 10, pp. 44–45, R. 152; Ex. 9, pp. 65, 73–74, R. 144; Ex. 11, p. 25, R. 212; Ex. 18, pp. 58–59, R. 166; Ex. 14, pp. 35–36, R. 255; Ex. 6, pp. 79–80, R. 109.

[73] See also Ex. 26, pp. 33, 47, R. 274, 835; Ex. 10, pp. 44–46, R. 152; Ex. 7, pp. 20–21, R. 124; Ex. M, pp. 25, 29, R. 465; Ex. 11, pp. 12, 25, R. 212; Ex. 6, pp. 14–15, 47, 53, R. 109; Ex. 9, pp. 73–74, R. 144; Ex. 18, pp. 58–61, R. 166; Ex. 14, pp. 18, 35–36, R. 255.

The result was to be chaotic upheaval; the existing government's efforts to put down the uprising constituted the use of force and violence to combat which the Communists then had also to use the force and violence which had been predicted.[74]

Moreover, petitioner expressly espoused the view and belief that a majority [75] had the "right" to take "things into their own hands" (R. 876–877) and to resort to force and violence and to revolution to attain their objective of political power if not successful through peaceable means (R. 374, 375, 867, 869, 885–886), and stated that he considered he had a constitutional right to enunciate these general principles on the right of revolution (R. 373).

This course of events thus embodied in the interpretation to which petitioner testified he subscribed is, we submit, more than resigned acceptance to the coming in of the tide. It is, indeed, initiation, not mere prediction, of fundamental economic, political and social changes.

[74] See Ex. 6, pp. 14–15, 27, 32, 54, 83, R. 109; Ex. 11, p. 25, R. 212; Ex. 16, pp. 107–108, R. 187; Ex. 18, p. 43, R. 255; Ex. 10, pp. 45–46, R. 152; Ex. L, pp. 16–17, R. 464; Ex. 26, p. 40, R. 274, 835.

[75] Petitioner used "majority" to refer to the "dominated class," and "minority" to refer to the "dominant" or ruling class or group (R. 373–375, 389–390, 868, 869, 876, 877, 897). This usage follows communist parlance: They did not speak of a legally expressed majority, and admitted they would not have a majority, even of the workers and agrarians, in their ranks until after they had seized political power (Ex. 13, pp. 4–5, R. 249; Ex. 26, pp. 33–34, 36, 44, 45, 52, R. 274, 835).

and belief in, not mere prediction of, the use of force and violence as the climax of such change. Since it is advocacy of constant effort toward creation of the situation, of deliberate precipitation of the State's "initial use for force," of development to civil war, the conclusion follows that it is advocacy and belief in the overthrow of the Government by force and violence."[76]

3. *The decree must be affirmed since the evidence establishes that petitioner was not attached to the principles of the Constitution.*

(a) The evidence in the record establishes that the Communist Party believed in, advocated, and taught political principles fundamentally at variance with the principles of the Constitution.

American democracy, deriving from the Constitution—

> is a fraud. Such formal democracy as is written into the Constitution and the laws of the country is camouflage to hide the real character of the dictatorship of the capitalists."[77]

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[76] Particularly is the conclusion justified in the light of the further communist precept (*supra*, pp. 71–72) that in any event the mere existence of the State presupposes the current use by it of force and violence against the "dominated class," and that therefore, since force and violence has already been initiated by the "dominating class" in its enforcement of the law, resistance to such enforcement (counter force) is justified.

[77] Constitution of the Workers Party of America (1921–1924), Ex. 27, p. 7, R. 276. See also Ex. 15, p. 36, R. 264;

Accordingly, the Party advocated the adoption of a wholly new political system. Existing constitutional concepts were to be abandoned: There was to be "immediate and unconditional confiscation of the estates of the landowners and big landlords,"[78] but "No propaganda can be admitted in the ranks of the Communist parties in favor of an indemnity to be paid to the owners of large estates for their expropriation" (Ex. 26, p. 82, R. 274, 835).[78] In the interim government to be established by the Communists, the traditional freedoms guaranteed by the Bill of Rights were to be ended:

> * * * there can be no talk of "freedom" for everybody. The dictatorship of the proletariat is incompatible with the freedom of the bourgeoisie. The dictatorship is, in fact, necessary to deprive the bourgeoisie of their freedom, to chain them hand and foot in order to make it absolutely impossible for them to fight the revolutionary proletariat.[79]

Ex. 6, pp. 33, 35, 38–41, R. 109; Ex. 18, pp. 18, 63–64, R. 166. The constitutional system of checks and balances, of election of Senators, or the Senate's power to pass on legislation, and of procedure for amending the Constitution were criticized as designed to frustrate the will of the majority (Ex. 27, p. 6, R. 276). The Constitution was said to have been framed by "the merchants, the bankers and landowners of 1787" and it protected only "the coal barons, railroad kings, and the industrial and financial lords" (*ibid;* Ex. 15, p. 36, R. 264).

[78] See also Ex. 6, pp. 38–39, 41, R. 109; Ex. 8, p. 41, R. 129. "Modern bourgeois private property" was to be abolished under Communism. Ex. 7, pp. 23, 25, R. 124.

[79] "A B C of Communism," Ex. 16, pp. 65–66, R. 187. See also Ex. 8, pp. 63–64, R. 129; Ex. 26, p. 11, R. 274, 835.

Accordingly, "class enemies" of the proletariat were to be deprived of their political rights (Ex. 6, p. 35, R. 109); the new State cannot include "representatives of the former ruling classes" (Ex. 26, p. 46, R. 274, 835). Freedom of assembly was to be reserved exclusively for "the toilers" (Ex. 11, p. 31, R. 212).

While available democratic procedures of elections were to be used by the Communists, the use was to be confined not to constructive improvement within the existing framework; rather the communist candidate's task was "to expose the fraudulent character of capitalist democracy and to carry on the propaganda for the soviets" (Ex. 13, p. 80, R. 248).[80] And if elected to public office, the Communist was directed, in an official work issued in 1923 and constituting the precepts of the Party in 1925, to "facilitate the task of destruction" of the existing "apparatus" (Ex. 26, pp. 44–45, R. 274, 835), since the "bourgeois State organizations" were to be utilized only "with the object of destroying them" (*id.*, p. 46).

The destructive aim of the communist candidate reflected the Party's destructive objective. The existing democratic framework was said to be not one which could be evolved and perfected; it had to be wholly destroyed. The workers could not utilize "the form of organization of the existing government, constitutional basis, its law, the bureaucracy

[80] "The Second Year of the Workers Party of America" (1924).

which has been built up over a century" (Ex. 27, p. 9, R. 276). Rather, the aims of the Communists could be achieved only by "the annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, bureaucratic, municipal, etc.," and it was necessary for the Communist to "break and destroy" the "apparatus" (Ex. 26, pp. 11, 44–45, R. 274, 835).[81] And the annihilation of the existing political structure was said to be equally as necessary in the United States as elsewhere (Ex. 8, pp. 22, 26, R. 129), for democracy, it was said, too, was to be destroyed (*id.*, p. 59).

In the place of the existing government destroyed by them the Communists were to build a new state, a new government (Ex. 14, p. 12, R. 255) which was to be "not a change of ministry, but a new State, with central and local organs, the State of the proletariat which rises on the ruins of the old State of the bourgeoisie" (Ex. 11, p. 30, R. 212).[82] "Territorial congressional districts" were to be replaced by "councils of the workers" which unite legislative and executive power (Ex. 15, p. 37, R. 264; see also Ex. 26, p. 46, R. 274, 835; Ex. 18, pp. 50–51, R. 166). The Senate, the Supreme Court, and the veto power of the President were to be abolished (Ex. 15, p. 38, R. 264). In their stead was to be a "dictatorship of the

[81] See also Ex. 15, p. 37, R. 264; Ex. 11, pp. 30–33, R. 212; Ex. 8, p. 22, R. 129.

[82] See also Ex. 14, pp. 11–12, R. 255; Ex. 11, p. 33, R. 212; Ex. 8, pp. 25, 26, R. 129.

proletariat" (Ex. 6, p. 32, R. 109).[83] The Soviets, which were to rule the government, were to be selected only by workers and farmers, and ultimately controlled by the Communist Party; the party control of the Soviets, through its organizational structure, which was to lead directly from local units to a world congress, an executive committee, a subcommittee (Presidium), and a Political Secretariat, was to vest in a single individual.[84]

In short, according to the "Communist Manifesto," "The Communists everywhere support every revolutionary movement against the existing * * * order of things" (Ex. 7, p. 44, R. 124). And this included the United States, for the purposes of the Communist Party and its members were, in sum,

> purposes utterly antagonistic to the purposes for which the American democracy, so-called, was formed.[85]

In his testimony and other evidence, petitioner did not advert to most of the evidence concerning the aims of the Communist Party and its views in respect of the existing form of government. He cited the provisions of the 1938 constitution of the

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[83] See also Ex. 6, pp. 7, 34, 35, R. 109; Ex. 26, pp. 64–65, R. 274, 835; Ex. 12, p. 113, R. 241; Ex. 8, pp. 18–19, 61, R. 129.

[84] See Ex. 26, pp. 5–8, 37–39, R. 274, 835; Ex. 6, pp. 85, 86–93, R. 109; Ex. 11, pp. 67–68, 72–73, R. 212; Ex. 14, pp. 31, 40, R. 255; Ex. 27, p. 10, R. 276.

[85] Ex. 14, p. 7, R. 255 ("Acceptance Speeches").

Communist Party, the equivocal preamble of which states that the Party is devoted to

> carrying forward today the traditions of Jefferson, Paine, Jackson, and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the right of "life, liberty, and the pursuit of happiness" and defends the United States constitution against reactionary enemies who would destroy democracy and all popular liberties; * * * (R. 365–366).[86]

Petitioner further testified to his belief that advocacy of revolution was consistent with the writings and speeches of Jefferson and Lincoln (R. 373, 396–397). The "democratic structure" is to be preserved and utilized "as far as possible for the advantage of the working classes" (R. 693; cf. R. 420, 549). "Nationalization" of property may possibly take place "with compensation" (R. 872–874, 878, 895, 896). In general, petitioner testified that at the time he was admitted to citizenship and for five years preceding as well as at all times subse-

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[86] Article VI of the 1938 constitution (Ex. 5, R. 84) provided:

> Rights and Duties of Members
>
> SECTION 1. The Communist Party of the U. S. A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree (R. 367).

quent, he was "fully attached" both to the "spirit and letter" of the Constitution and laws of the United States, as he understood them (R. 896). But he also testified that at the time of his naturalization, he advocated socialism, as expressed in the writings of Marx, Engels, and Lenin, and as stated in the Programme of the Communist International,[87] for the United States (R. 862, 898), and that socialism was to develop into a communistic society (R. 862, 863). He used and taught from the relevant literature and he had "done all I could to educate the people in the principles of socialism" (R. 865). He testified that the "dictatorship of the proletariat" as used in the communist literature meant "not a form of government, but a state of things" and meant only that the majority by the people shall in fact direct their own destinies and shall control the agencies of government (R. 376, 377, 394, 395, 863, 864).

It will thus be seen that there is no conflict concerning most of the evidence establishing the communist views toward the existing Constitution and political structure of the United States. Petitioner did not repudiate or deny the bulk of the evidence but tentatively modified only the evidence on expropriation of private property without compensation. For the rest, he relied upon the broad principles of the 1938 communist constitution and the broad statement of "attachment to the spirit and letter of the Constitution," without reference,

[87] Ex. 6, R. 109.

however, to the particular substantive principles embodied in it. He admittedly adhered to the general political or theoretical principles of Communism, and he participated actively to achieve the realization of those principles.

The evidence as a whole, therefore, clearly supports the concurrent findings of the courts below (R. 49, 916–917) that petitioner was not attached to the principles of our government as embodied in the Constitution but, on the contrary, advocated, believed in, and taught principles fundamentally at variance with its spirit and text. Other courts on similar evidence have reached a like result in respect of the ends and objectives of the Communist Party and its members. *United States* v. *Tapolcsanyi,* 40 F. (2d) 255, 257 (C. C. A. 3); cf. *In re Van Laeken,* 22 F. Supp. 145, 14[illegible]–147 (N. D. Cal.); *In re Saralieff,* 59 F. (2d) 436 (E. D. Mo.); *Ex parte Sauer,* 81 Fed. 355, 356 (Tex.) (socialism); *United States* v. *Olsson,* 196 Fed. 562, 564–565 (W. D. Wash.), reversed without opinion and remanded for new trial pursuant to stipulation of counsel, 201 Fed. 1022 (C. C. A. 9) (socialism).

(b) On the basis of this evidence, especially where coupled with the evidence, elsewhere discussed, concerning petitioner's lack of true faith and allegiance to the United States (Point IA, pp. 29–52), concerning his advocacy of general resort to violation of the laws (Point IB1, pp. 54–59), concerning his advocacy of the overthrow of

this Government by force and violence (Point IB2, pp. 61–70), and concerning his disbelief in organized government (Point IC, pp. 110–114), the district court properly ordered the cancellation of petitioner's citizenship on the ground of lack of attachment to the principles of the Constitution.

The Naturalization Act provided in 1927 that an alien seeking citizenship must, for the five years preceding his naturalization, have "behaved as a man * * * attached to the principles of the Constitution of the United States, * * *" (8 U. S. C. 382). But mere behavior is insufficient; it is settled that the alien must not only behave as a man attached to the principles of the Constitution but must also have been *in fact* so attached. *United States* v. *Macintosh,* 283 U. S. 605, 616.[88] Consequently, the alien's beliefs and views as well as his conduct during the five-year period prescribed, became relevant. *United States* v. *Schwimmer,* 279 U. S. 644, 650–651.

The statutory requirement of attachment is not fulfilled if the political and social principles

[88] The word "behaved" was omitted by the Nationality Code, Act of October 14, 1940, c. 876, Title I, sec. 307, 54 Stat. 1142, 8 U. S. C. 707 (a), and the alien was expressly required to be *in fact* attached to the Constitution. But it does not appear that the Code intended thereby to change the existing law, since it was essentially a codification and clarification. See *supra*, p. 82, n. 64. Further, it appears plain that the specific change, omitting the reference to behavior contemplated no change in the statutory requirements. See Report of the President's Commission Proposing a Revision and Codification of the Nationality Laws of the United States, 76th Cong., 1st Sess., Part I (1939), p. 23.

adopted by an alien are, in their substance, wholly inconsistent with or outside the framework of the existing government and the basic principles of the Constitution. Attachment to the principles of the Constitution requires belief in and sincere adherence to its general political philosophy. The lower courts have uniformly so held. *In re Van Laeken*, 22 F. Supp. 145, 147 (N. D. Cal.); *In re Shanin*, 278 Fed. 739, 740 (Mass.); *In re Saralieff*, 59 F. (2d) 436 (E. D. Mo.); *In re Beale*, 2 F. Supp. 899, 901 (Minn.), affirmed, 71 F. (2d) 737 (C. C. A. 8).[89]

Petitioner, however, contends (Br. 25–27) that under the Naturalization Act, belief in or advocacy of changes in the Constitution, regardless of the scope, are immaterial so long as the change is sought by peaceful means. We believe that this view fails to give import to the text of the statute or to its legislative history.

While the right of both citizens and aliens to advocate changes in our Constitution and society by

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[89] But see *United States* v. *Rovin*, 12 F. (2d) 942 (E. D. Mich.); 18 Cornell L. Q. 251; 46 Harv. L. Rev. 325. And compare the statement of Holmes, J., dissenting in the *Schwimmer* case, *supra*, at p. 654:

> Surely it cannot show lack of attachment to the principles of the Constitution that she [the alien] thinks that it can be improved. * * * Her particular improvement looking to the abolition of war seems to me not materially different in its bearing on this case from a wish to establish cabinet government as in England, or a single house, or one term of seven years for the President. * * *

the prescribed methods is of course not disputed, it cannot be supposed that an alien can be deemed to be *attached* to the principles of the Constitution when his attachment, and that highly qualified,[90] is confined to Article V. This does not constitute a general attachment to the spirit and substance of the Constitution. The Constitution stands for more than an instrument whereby peaceful change may be accomplished. We do not contend, of course, that, to achieve citizenship, an alien must insist on the maintenance of the *status quo* or believe that improvement is impossible. He may think that the laws and the Constitution should be amended in some or many respects. But Congress, when it required that an alien must be attached to the principles of the Constitution, can scarcely be supposed to have made available the high privilege of citizenship to an alien whose political beliefs are wholly destructive of and at variance with the existing structure or

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[90] The Communists were severely critical even of the *procedure* prescribed by Article V. The Program and Constitution of the Workers Party based its conclusion that "American democracy is a fraud" in part on the provision of Article V, the result of which was said to be that "A majority of the people of the United States cannot change the Constitution. The vote of two-thirds of the members of the legislators [*sic*] of three-fourths of the states is required to pass a constitutional amendment. One-fourth of the states, in which there may live only one-fortieth of the population can prevent any change of the fundamental law of the land" (Ex. 27, p. 6, R. 276). The same view was repeated in "The Platform of the Class Struggle" (Ex. 15, p. 34, R. 264).

with the fundamental concept held by the forefathers with respect to government, the rights of the individual, the minority, and the majority. The test is not whether an alien, rightly or wrongly, believes in evolved changes looking toward a better society; it is whether he substitutes revolution for evolution, destruction for construction, whether he believes in an ordered society, a government of laws, under which the powers of government are granted by the people but under a grant which itself preserves to the individual and to minorities certain rights or freedoms which even the majority may not take away; whether, in sum, the events which began at least no further back than the Declaration of Independence, followed by the Revolutionary War and the adoption of the Constitution, establish principles with respect to government, the individual, the minority and the majority, ~~replace ordered liberty~~ by which ordered liberty is replaced by disorganized liberty."[91] And since the evidence shows that petitioner's political philosophy included "annihilation" of the existing State, destruction of the "social

[91] Even belief in these basic principles may not fulfill the requirements of "attachment" within the meaning of the Naturalization Act. Other basic principles—that the form of government be representative, for example, which, again, the Communists did not accept (supra, pp. 95, 97)—may also be embodied in "attachment." But the criteria set out in the text plainly mark at least a *minimum* which an alien must accept to qualify as attached to the principles of the Constitution.

and political order of things," disbelief in what we conceive to be democracy, and abolition of elements universally regarded as integral to a democratic state, he has failed to meet the test.

The history of the Naturalization Act supports the view that objectives, no less than means, were intended as a qualification for citizenship, and that Congress intended to withhold citizenship from those aliens whose political beliefs were basically at variance with principles embodied in the existing system of government.

The Act of March 26, 1790,[92] the first Naturalization Act, required an oath to support the Constitution, and a two-year residence in the United States. The latter requirement was imposed in order, first, that the alien—

> have an opportunity of knowing the circumstances of our Government, and in consequence thereof, shall have admitted the truth of the principles we hold. Second, that he shall have acquired a taste for this kind of Government.[93]

The "principles we hold" are not wholly empty of content. The communism of 1927 was irreconcilable with them (Ex. 26, p. 64, R. 274, 835; Ex. 6, p. 35, R. 109; Ex. 15, pp. 11, 58–59, R. 264; Ex. 11, pp. 33, 34, R. 212; Ex. L, pp. 20–21, R. 464; Ex. D, p. 13, R. 438).

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[92] C. 3, 1 Stat. 103.

[93] Michael J. Stone, 1 Debates in Cong. (Old Series) 1789–1790, p. 1157; see also *id.*, pp. 1147–1148, 1150, 1155–1156.

The intent of Congress to create standards of substantive attachment to the existing political structure was again evidenced with the passage of the Naturalization Act of 1795,[94] which for the first time imposed the requirement that the alien shall have "behaved as a man * * *, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." The Act, the debates show, was passed in a background of turmoil in Europe, marked by overthrow and expulsion of established governments, and creating the fear that emigrant refugees would hold principles not consonant with our ideals.[95] Accordingly, it was

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[94] C. 20, 1 Stat. 414.

[95] In supporting the bill, Theodore Sedgwick stated (4 Annals of Cong., 3rd Cong., 1793–1795, p. 1008):

> The present (Mr. S. said) he believed the most inauspicious time for the indiscriminate admission of aliens to the rights of citizenship. A war, the most cruel and dreadful which had been known for centuries, was now raging in all those countries from which emigrants were to be expected. The most fierce and unrelenting passions were engaged in a conflict, which shook to their foundations all the ancient political structures in Europe. This contest was supported on the one hand by men who believed personal political distinctions were necessary to the great purpose of security, and on the other by those who thought that society could be protected and individuals secured by a Government with departments, and without checks; neither embracing the principles established here, where, without privileged orders distinct portions of power were to be deposited in different hands, in such manner that it was almost impossible for the mind even to conceive that the different

proposed that an alien be required to be "attached to a Republican form of Government" in order "to prevent those poisonous communications, of which gentlemen were so much afraid." 4 Annals of Cong., 3rd Cong., 1793–1795, p. 1021. The proposal was amended to substitute "attached to the Constitution of the United States" since the term "Republican" was equivocal and a title "assumed by many Governments in Europe, which were upon principles entirely different from ours." Some which were said to have assumed the title of "Republican" had been "Aristocracies of the most hideous form," while "Many call themselves Republican, who, by this word, mean, pulling down every establishment; they were mere Anarchists."[96]

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departments should form an union for any mischievous purpose; and altogether impossible to believe that without such concurrence either alone should be capable of executing any wicked design.

Could (he asked) any reasonable man believe, that men who, actuated by such passions, had fought on grounds so opposite, almost equally distant from the happy mean we had chosen, would here mingle in social affections with each other, or with us? That their passions and prejudices would subside as soon as they should set foot in America? or, that, possessing those passions and prejudices, they were qualified to make or to be made the governors of Americans?

[96] James Madison objected to the amendment since "It was hard to make a man swear that he preferred the Constitution of the United States, or to give any general opinion, because he may, in his own private judgment, think Monarchy or Aristocracy better, and yet be honestly determined to support this Government as he finds it." 4 Annals of Cong., 3rd Cong., 1793–1795, pp. 1022–1023. When Congress

Id., pp. 1021–1022. One of the very groups designed to be excluded from naturalization was, in fact, the Jacobins,[97] whose views were "abhorrent to the Constitution" and who were "dangerous to the country" (*id.*, pp. 1031–1032).

In sum, it is clear that from the inception of the naturalization law, Congress intended that "attachment to the Constitution" contemplated not only adherence to its procedure but also subscription to the general existing form of government embodied in the Constitution.[98] Since the

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adopted the amendment over Madison's objections it rejected mere determination to "support this Government as he finds it" while reserving "private judgment" that some other system is better.

[97] For the parallel between Communists and Jacobins, see Brinton, *The Jacobins* (1930). In his Manifesto of the Communist Party (Ex. 7, p. 39, R. 123), Marx approved of the revolutionary ideology of Babeuf, the leader of the counter-revolutionary faction composed principally of Jacobins. Babeuf's philosophy contemplated the abolition of private property and the communisation of all land and products of industry. See Bax, *The Last Episode of the French Revolution* (1911); Birley, *Tre English Jacobins* (1924); cf. "A B C of Communism," Ex. 16, preface, p. 2, R. 187

[98] The contemporary legislative conception of the qualifications for citizenship under the attachment provision parallels the conception of the legislators who passed the earliest acts. See H. Rep. No. 1941, 75th Cong., 3d Sess. (1938) which recommended the enactment of H. R. 9690, 75th Cong., 3d Sess., disqualifying from naturalization any person who "believes in any form of government for the United States contrary to that now existing in the United States or who is a member of or affiliated with any organization which advocates any form of government for the United States contrary to that now existing in the United States." While

evidence shows that petitioner at most accepted the form, but did not believe in the substance of the Constitution, his citizenship was validly cancelled.

C. THE FINDING THAT PETITIONER DISBELIEVED IN, OR WAS A MEMBER OF AN ORGANIZATION DISBELIEVING IN, ORGANIZED GOVERNMENT IS SUSTAINED BY THE EVIDENCE, AND THE DECREE MUST THEREFORE BE AFFIRMED

Petitioner in his petition of naturalization stated that he was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization teaching disbelief in or opposed to organized government (R. 75). The district court found this statement to have been untrue

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no further action was taken on the proposed legislation, the Committee Report expressly stated (p. 2) that "This bill does not in any manner change any of the provisions of existent law[;] it merely adds the additional language calling especial attention to the necessity of inquiring as to the applicant's membership in organizations" advocating a change in the form of government.

With this report should be compared H. Rep. No. 1353, 72d Cong., 1st Sess. (1932), recommending the enactment of H. R. 12044 to amend the Immigration Acts by providing for the exclusion of aliens who advocate the overthrow of the Government *by force and violence*. The bill proposed to define a "Communist" as one who advocates force and violence (see *infra*, p. 123, n. 107). The Committee on Immigration and Naturalization stated in its report (p. 2) that the definition would exempt any alien who "although subscribing to the doctrine of a system of common ownership of property and the abolition of private property or the common ownership of the means of production, does not believe in, advise, or advocate the establishment of this system by force or violence." To omit the requirement that the element of force and violence be present, the Report stated (p. 3), "would do great violence to the eternal principles of American liberty." See also H. Rep. No. 1023, Pt. 1, 74th

(R. 48–49), that in fact the Communist Party taught disbelief in and opposition to organized government, and that petitioner subscribed to these principles (R. 49). Since the Naturalization Act (34 Stat. 598, 8 U. S. C. 364; see Appendix A, *infra*, pp. 129–130) expressly disqualified from citizenship any alien who disbelieved in, or was a member of any organization which disbelieved in, organized government, the decree cancelling petitioner's certificate must be affirmed if the district court's findings in this respect are not clearly erroneous. We submit that they are correct.

Cong., 1st Sess. (1935) on H. R. 7120, p. 3; S. Rep. No. 808, 72d Cong., 1st Sess. (1932) on H. R. 12044, pp. 2–3.

These statements do not, however, require the conclusion that the Committee did not intend to deny *citizenship* to aliens advocating fundamental changes in the form and principles of our government. The bills there under consideration related only to admission and deportation. We discuss the distinction between such provisions and naturalization below (pp. 123–125). Here it may be noted, however, that the legislative history of the earliest Naturalization Acts discloses that one of the very reasons for the requirement that the alien reside in the United States for a specified period was in order that he "have an opportunity of knowing the circumstances of our Government" and "shall have acquired a taste for this kind of Government" (*supra*, p. 106). By rejecting as a standard of admission or continued residence an alien's substantive political principles as distinguished from his beliefs relating to the means by which he advocates the realization of those principles, Congress would simply be following the earliest legislative desire to provide the alien with the opportunity for "acquiring a taste for this kind of Government." It would be entirely consistent, therefore, for Congress on the one hand to permit an alien to enter and reside, and, on the other hand, to deny him citizenship if its hopes that his beliefs will be acclimated are not realized.

A basic tenet of Communism is, as we have noted (*supra,* pp. 71–72), that any State is simply an "organ" or "embodiment" of class domination;[99] the transitional government of the dictatorship of the proletariat which Communism would impose is itself a "domination of the proletariat over the bourgeoisie * * * " (Ex. 11, p. 31, R. 212; see also Ex. 16, p. 60, R. 187). Accordingly Communism does not recognize "any form of State authority" (Ex. 26, p. 45, R. 274, 835). Since the State is, thus, evil and undesirable as an instrument of oppression, it must ultimately disappear and

> Society will banish the whole State machine to a place which will then be the most proper one for it—to the museum of antiquities side by side with the spinning-wheel and the bronze axe.[100]

The disappearance of the State, however, is not immediate; it occurs as a "withering away" only after the "transitional form" of a proletarian dictatorship (Ex. 8, pp. 13, 42–43, 64, 69, R. 129; see Ex. 16, p. 135, R. 187). Thus, according to the

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[99] "* * * According to Marx, the State is the organ of class *domination*, the organ of oppression of one class by another. Its aim is the creation of order which legalizes and perpetuates this oppression by moderating the collisions between the classes" ("The State and Revolution," Ex. 8, p. 5, R. 129). See also *id.*, p. 64; Ex. 6, p. 29, R. 109.

[100] This passage from Engels is quoted in "The State and Revolution," Ex. 8, p. 11, R. 129. See also Ex. 6, p. 29, R. 109; Ex. 10, p. 30, R. 152; Ex. 16, p. 60, R. 187.

communist literature, the Anarchists and the Communists differed only in respect of the method by which government was to be abolished.

> He [Marx] protested not against the [Anarchist] theory of the disappearance of the State when classes disappear, or o[f] its abolition when classes have been abolished, but only against the proposition that the workers should deny themselves [to] the use of arms, the use of organized force, that is, *the use of the State*, for the purpose of breaking the resistance of the capitalist class. Marx purposely emphasizes, in order that the true sense of his contentions against the Anarchists might not be perverted, "the revolutionary *and transitional form*" of the State necessary for the proletariat. The proletariat only needs the State *temporarily*. We do not at all disagree with the Anarchists on the question of the abolition of the State as a *final aim* ("The State and Revolution," Ex. 8, p. 43, R. 129).[101]

And with the ultimate disappearance of the State, there will be no government: there will be left only "The principal work of administering" which "will be done in various counting-houses and statistical bureaus" ("A B C of Communism," Ex. 16, p. 59, R. 187; see also Ex. 8, p. 56, R. 129).

Except for his general assertion that he had truthfully stated that he was not an Anarchist and that he did not believe that the Communist Party

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[101] See to the same effect *id.*, pp. 64, 69, 82: Ex. 27, p. 10, R. 276; Ex. 10, p. 30, R. 152.

was an organization opposed to organized government (R. 362–363), petitioner did not advert in his testimony to the views embodied in the literature summarized above. Petitioner's own testimony,[102] as well as other evidence which he introduced (R. 743–744), however, coincided with such literature, and included the belief in the ultimate abolition of the State.

We submit that the evidence supports the conclusion that both petitioner and the Communist Party disbelieved in organized government. While for present purposes we may assume that the objective of the ultimate abolition of the State was to be achieved by peaceful evolution (but see *supra*, pp. 61–68) following the period of transition, it has been held that the statutory language was intended to embrace both philosophical disbelievers in organized government and violent "Anarchists." *United States* v. *Stuppiello*, 260 Fed. 483 (W. D., N. Y.); cf. *Lopez* v. *Howe*, 259 Fed. 401, 404–405 (C. C. A. 2), appeal dismissed and certiorari denied, 254 U. S. 613, 650; *United States ex rel. Georgian* v. *Uhl*, 271 Fed. 676, 677 (C. C. A. 2), cer-

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[102] Petitioner, in his own testimony, incorporated a statement by Earl Browder which petitioner said "sums up in clearest form" the communist views regarding democracy and socialism (R. 381). The Browder statement said (R. 389): "* * * all government—a necessary evil at best—must be directed toward creating a classless society, where exploitation of man by man has been entirely abolished, and where therefore, government, the state power, will ultimately become unnecessary, and will wither away and disappear."

tiorari denied, 256 U. S. 701; *Ex parte Pettine*, 259 Fed. 733, 734–735 (Mass.). Nor does it appear that the statutory language is inapplicable in the instant case because the abolition of the State was of necessity only an ultimate and remote goal: The provisions of the Act contain no restrictive language with reference to the imminence of the disappearance of the State; indeed they would have scant applicability if confined in operation to persons or organizations believing in or teaching the immediate abolition of all organized government. The theory of the statute seems to be that aliens who disbelieve in organized government, or who are members of an organization disbelieving in organized government, are no less objectionable if they envisage the accomplishment of their objective at an opportune future time than if they believe in it as an immediate endeavor. The statutory terms "disbelief" and "opposition," indeed, seem deliberately designed to embrace attitudes without reference to immediacy of realization.[103]

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[103] The courts have not interpreted the statute as requiring immediacy. See *United States* v. *Stuppiello*, *Lopez* v. *Howe*, *United States ex rel. Georgian* v. *Uhl*, *Ex parte Pettine*, *supra*. In *Turner* v. *Williams*, 194 U. S. 279, there was involved the constitutionality of a provision of the Immigration Act of 1903 for the deportation of "anarchists." The argument was made that the act was inapplicable to anarchists who "are merely political philosophers, whose teachings are beneficial rather than otherwise" (p. 292). This Court, however, said that the Act could constitutionally be applied to "aliens whose anarchistic views are professed as those of political philosophers innocent of evil intent" (p. 294).

II

NEITHER THE NATURALIZATION ACT NOR THE CONSTITUTION BARS CANCELLATION OF PETITIONER'S CERTIFICATE OF CITIZENSHIP

We have urged that the district court was correct in finding that petitioner was not, and had not behaved as, a person attached to the Constitution and well disposed to the good order and happiness of the United States, that petitioner's oath of allegiance was false, and that petitioner and the organizations of which he was a member disbelieved in and were opposed to organized government. In connection with our discussion of these findings, we have also urged that the evidence relating to particular issues warranted cancellation of petitioner's certificate of citizenship.

Petitioner, however, urges two propositions applicable generally to all the evidence: (1) that the Naturalization Act, as of 1927, was not intended to disqualify from citizenship aliens who adhered to communistic principles, beliefs, and organizations (Br. 14, 18–24); and (2) although not specified as error or as a reason for granting the writ of certiorari, that disqualification of an alien for the privilege of citizenship because of his adherence to such principles, beliefs and organizations is unconstitutional as an abridgment of freedom of political belief and thought, of speech, and of the press (Br. 27–31). We believe that these contentions are mistaken.

1. Petitioner construes (Br. 18) the Naturalization Act as setting up three tests: one, retrospective, behavior; two, present beliefs and party affiliations; and three, prospective, an oath of abjuration and allegiance. Concerning the first, behavior, petitioner contends that the statutory requirements are limited to residence for a specified period, proof that the alien is not a polygamist, and proof that petitioner " 'has *behaved* as a man of good moral character, attached to the principles of the Constitution and well disposed to the good order and happiness of the same.' " (Br. 18.) The latter requirement, in turn, petitioner contends (Br. 18–19) he has fulfilled since he has met the purely objective standards of behavior.

Even were the requirement of behavior limited to objective standards, we have shown that petitioner has not met them in that he gave his support to and aided in the distribution, dissemination and formulation of literature the ordinary import of which is to advocate force and violence (*supra,* pp. 86–88), in that he advocated and taught the overthrow of the Government by force and violence (*supra,* pp. 68–70, 82–93),[104] and in that he believed in and actively participated in an organ-

[104] We do not understand petitioner to question that one who personally advocates and teaches the overthrow of the Government by force and violence may be precluded from citizenship under the 1927 statutes. See Petitioner's Brief, pp. 5, 15–16, 25, 26.

ization which advocated general resort to violations of the law (*supra*, pp. 54–60).

In any event, it is settled that the test of behavior is not purely objective but that an alien must also in fact be attached to the principles of the Constitution and well disposed to the good order and happiness of the United States (*supra*, pp. 101–102). Petitioner thus has further failed to meet the required standards in that he was not in fact attached to principles of the Constitution or well disposed to the good order and happiness of the United States since he believed in, taught and advocated principles wholly at variance with the existing structure of the Government and with the Constitution (*supra*, pp. 94–110), and since he believed in, advocated, and taught the overthrow of the Government by force and violence (*supra*, pp. 68–70, 82–86, 88–93). Nor was petitioner in fact well disposed to the good order and happiness of the United States since he believed in, and actively participated in an organization which advocated, general resort to violation of the law to achieve the communist aims (*supra*, pp. 54–60).

Concerning the second test urged by petitioner, present beliefs and party affiliations, he contends (Br. 19–20) that the only requirements were that the alien not be a disbeliever in organized government or a member of or affiliated with any organization teaching disbelief in or opposition to organized government, and that he not be a believer in polyg-

amy. Even were this contention accepted, again petitioner did not meet the statutory criteria in that he disbelieved in and was opposed to, and was a member of an organization teaching disbelief in and opposition to, organized government (*supra,* pp. 110–114). But in addition, a reading of the Naturalization Act in the light of the deportation provisions in effect in 1927, requires the inclusion of the further standard that an alien, to obtain citizenship, not be deportable as a member of an organization which believes in, teaches, or advocates the overthrow of the Government by force and violence (*supra,* pp. 79–81). Here, too, petitioner lacked the statutory qualification in that he was a member of such an organization (*supra,* pp. 73–79).

Nor in respect of the third group of standards advanced by petitioner, the bearing of true faith and allegiance to the United States and renunciation of all other allegiance, has petitioner met the necessary criteria. Rather, the evidence shows not only that petitioner's allegiance was to the Communist Party and the Third International, but also that he was affirmatively lacking in allegiance to the United States (*supra,* point I, A, pp. 28–52).

Petitioner, however, seeks to avoid the conclusion that on any one of these bases the decree cancelling his naturalization certificate must be affirmed, on the broad ground that Congress has not specified active membership in the Communist

Party as a bar to naturalization and that, therefore, no such bar can be implied (Br. 18–24). A number of reasons, however, rob this contention of merit.

The contention, at the outset, seems to be based upon a misunderstanding of the Government's position and of the proof in this case. While in respect of certain qualifications mere proof of membership in the Communist Party, without more, is enough, with the exceptions noted in the margin,[105] our case rests not on membership *per se*, but upon petitioner's own views. It is our position that petitioner's own views, beliefs, and activities, whether they be termed communistic or not, disqualified him. It is true that it has been necessary to look to the literature of the Communists, to the structure and organization of the Party, and to the Party's relationship with its members, in order to determine what petitioner's views and allegiance were

[105] Mere proof of membership is sufficient to show (1) that, since the Naturalization Act must be read in connection with the deportation statutes, petitioner was disqualified because of membership in an organization advocating the overthrow of this Government by force and violence or disseminating literature to such effect (*supra*, pp. 60–81, 83–84); and (2) that petitioner was disqualified under a specific provision of the Naturalization Act as well as under the deportation statutes because of his membership in an organization disbelieving in or opposed to organized Government (*supra*, pp. 110–114). In addition, proof of membership, when coupled with appropriate evidence concerning the circumstances of such membership, is sufficient to show that petitioner, by reason of his membership in the Party, could not bear true faith and allegiance to the United States and lacked attachment to the Constitution (*supra*, pp. 28–52, 101).

at the time of his naturalization. In so far as petitioner undertook to deny that he adopted the views of his Party, his denial does not foreclose the issue but simply raises a question of the weight of the evidence. See *Whitney* v. *California*, 274 U. S. 357, 367; cf. *Allan v. United States*, 115 F. (2d) 804 (C. C. A. 9). Petitioner's own testimony must, in the course of determining his views, necessarily be measured against the doctrines of the Party of which he was a leader. See *United States* v. *Tapolcsanyi*, 40 F. (2d) 255, 257 (C. C. A. 3); cf. *United States* v. *Swelgin*, 254 Fed. 884 (Ore.). Particularly is this so where, as here, the organization requires of members inflexible conformance to its principles and acceptance of its programs (*supra*, pp. 29–45), where, as here, the member admits his affirmative adherence to the general principles of Communism (*supra*, pp. 6–7), and where, as here, the member of the Party is in a favorable position, through his leadership and active participation in classes and conventions (*supra*, pp. 4–6), to know the programs, principles and tactics of his Party.

That Congress may not have specified in terms active membership in the Communist Party as a bar to naturalization is, therefore, immaterial since, except as noted above (p. 120, n. 105), the case does not rest on membership *per se*.

Nor can the inference that Congress did not intend to preclude aliens from citizenship because of

their communistic beliefs be fairly drawn from its failure to specify such beliefs as a bar.[106] This is clear from the entire legislative history of the Naturalization Acts (*supra,* pp. 105–109). That history establishes that the broad and general phrases, such as attachment to the Constitution, were expressly designed to bar aliens with views and tenets contrary to fundamental principles of our existing form of government. It was recognized that the full range of disqualifying affiliations and beliefs could not be catalogued so as to assure full protection. The requirement of attachment to the Constitution was, as we have seen, regarded as precluding those with views of "Jacobins" or who favor the principles of "aristocracies," "monarchies," or "anarchies." Therefore, instead of attempting to specify each of the activities, beliefs, or affiliations which constitute disaffection for and lack of attachment to the principles of the Constitution and so bar aliens from citizenship, Congress adopted the familiar method of utilizing general standards, leaving to the courts the application of these standards in each case. Since 1790, the courts have delineated the lines of attachment, of allegiance, of good moral character, and of favorable dis-

[106] We do not understand that petitioner argues wholly to the contrary since he apparently concedes (Br. 5, 15–16, 25, 26) that advocacy of the overthrow of the Government or changes in the political structure by force and violence disqualified an alien from citizenship even though prior to 1940 Congress had not expressly specified such a disqualification.

position. Traditionally, this has been the function of the naturalization courts. In the light of this unambiguous history, it cannot validly be contended that a congressional failure to specify particular beliefs thereby evidenced an intent to permit holders of any such beliefs to become citizens.

Similarly, we do not believe that the subsequent legislative history of the Naturalization Act justifies the conclusion that aliens found to hold and advocate the views here in issue were not intended by Congress to be barred from citizenship. The failure to pass two bills [107] (petitioner's br. 4; brief

[107] H. R. 12044 (72d Cong., 1st Sess., 1932) and H. R. 7120 (74th Cong., 1st Sess., 1935) were substantially identical. They proposed that the admission and deportation acts (40 Stat. 1012, as amended, 8 U. S. C. 137) be amended by including Communists, by name, among the classes of aliens excluded from admission into this country and deportable from it. H. R. 12044 defined a Communist as

> any alien who is a member of or affiliated with any organization which, or any alien who believes in, advises, advocates, or teaches (1) the overthrow by force and violence of the Government of the United States, or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or officers generally) of the Government of the United States or of any other organized government, because of his or their official character, or (3) the unlawful damage, injury, or destruction of property, or (4) sabotage, or (5) a doctrine which advocates the overthrow by force or violence of governments, constituted authority or social order, existing in countries not under the control of communists and the establishment in place thereof of (a) a regime termed

of *amicus curiae* 4–5) providing for exclusion of Communists as such from residence in the United States is not persuasive. These bills related to exclusion and deportation only. As we have already noted, the standards of political beliefs required for continued residence must, in respect of questions of attachment, of good disposition and of allegiance, be regarded as *minimum* standards implied in the Naturalization Act (*supra*, pp. 80–81). Even assuming that, by failing to pass these two bills, Congress did not intend that alien Communists be excluded or deported, it does not follow that therefore Congress also disapproved of *denial of citizenship* to alien Communists. Attachment to the Constitution, favorable disposition to the good order and happiness of the United States, and allegiance were not standards of alien admission or residence. Failure to pass these bills may simply have reflected the hope and confidence of Congress that the alien's exposure, in the course of his residence, to the American prin-

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"proletarian dictatorship" and/or (b) a system based upon common ownership of property and abolition of private property, provided that the platform, program, and/or objectives of the Third International or Communist International shall be held to embrace the said doctrine. No alien shall be held to be a communist under the provisions of this act if he shall prove that he became a member of such organization on account of fear, duress, compulsion, misrepresentation or fraud.

H. R. 7120 defined a Communist in substantially the same terms.

ciples would convert him from communist principles and qualify him for citizenship (see *supra*, p. 109, n. 98). Congress cannot be supposed to have made citizenship available to Communist aliens even if its hope and confidence proved not to be justified by the time the alien petitioned for naturalization.

But in any event even the assumption that Congress, in failing to pass these bills, intended that alien Communists be not excluded or deported does not appear to be warranted. It is clear that these bills were not regarded by Congress as changing the substantive law; rather they were intended primarily to relieve the Government of the burden of proving in each exclusion or deportation case that the Communist Party advocated the overthrow of this Government by force and violence.[108] Indeed, the chief basis of opposition to the bill was that the existing law was sufficient in that alien Communists were already deportable.[109]

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[108] In this sense, the recent congressional intent to exclude or deny continued residence to Communists is not inconsistent with the earlier intent to permit aliens who hold substantive beliefs different from ours an opportunity to "acquire a taste for this kind of government" (*supra*, p. 106). In the more recent bills, aliens were to be excluded not because of their substantive political principles but because Congress found that such principles were to be achieved by improper means, *viz*, force and violence. See *supra*, p. 123, n. 107.

[109] In respect of H. R. 12044 (72d Cong., 1st Sess.), see H. Rep. No. 1353, 72d Cong., 1st Sess., p. 3; S. Rep. No. 808, 72d Cong., 1st Sess., p. 2; 75 Cong. Rec. 12097, 12098, 12105,

2. Whatever the difficulty of squaring a *penalty* for political beliefs with traditional freedom of thought and expression, that is not the issue in this proceeding. Congress may properly use as a touchstone in naturalization proceedings an alien's political beliefs and loyalty.[110] It can scarcely be doubted, and petitioner does not apparently question, that it is fully within the constitutional competence of Congress to insist, before it grants citizenship, upon attachment to the principles of the Constitution and belief in organized government. See *Turner* v. *Williams,* 194 U. S. 279, 293. Yet these undoubtedly proper standards are standards of political beliefs even if the direct proscription of them would infringe the Bill of Rights.[111]

12106, 12107. In respect of H. R. 7120 (74th Cong., 1st Sess.), see H. Rep. No. 1023, Pt. 1, 74th Cong., 1st Sess., p. 2. Compare the statement of Congresswoman O'Day, presenting minority views in opposition to H. R. 7120; that in respect of advocacy of overthrow of this Government, the new provisions only repeated existing law, and that the proposed amendments "would even if it were practicable, accomplish practically nothing more than can be and is being accomplished under the present law. It is apparently not denied by the majority of the Committee that Communists are being deported under the present law" (H. Rep. No. 1023, Pt. 2, p. 2).

[110] Cf. 8 U. S. C. 703, which limits naturalization to "white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere."

[111] The judicial construction of deportation and naturalization statutes has apparently been unaffected by consideration of the extent to which freedom of speech and assembly might

Congress could, in its discretion, have transmuted the constitutional guarantees into legal rights due aliens seeking citizenship in the United States simply by not prescribing requirements of attachment, favorable disposition, and allegiance. It may be thought that such a course might have been more consonant with our traditions of free political thought, as well as with our traditional confidence that, where full freedom is permitted, democratic institutions are so strong that they will of their own force not only repel inconsistent political thoughts but also persuade newcomers to our country, as well as others, who hold such inconsistent political thoughts that their beliefs are incorrect and ours are not. But the answer seems clear that, in so far as here involved, the choice of standards is legislative, not constitutional. Since Congress has unquestionably chosen political beliefs as one of the qualifications for naturalization, the issue is for present purposes foreclosed.

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be directly abridged under the Constitution. See *Turner* v. *Williams*, 194 U. S. 279, 294; cf. *Lopez* v. *Howe*, 259 Fed. 401 (C. C. A. 2), appeal dismissed and certiorari denied, 254 U. S. 613, 650; *Ex Parte Pettine*, 259 Fed. 733, 735 (Mass.); *United States ex rel. Fortmueller* v. *Commissioner of Immigration*, 14 F. Supp. 484, 487 (S. D. N. Y.). Nor has the *imminence* of the changes or other actions which an alien advocates been regarded as a factor in construing the statutes. See *United States ex rel. Georgian* v. *Uhl*, 271 Fed. 676, 677 (C. C. A. 2), certiorari denied, 256 U. S. 701; *Kjar* v. *Doak*, 61 F. (2d) 566, 568 (C. C. A. 7); *United States ex rel. Aberu* v. *Wallis*, 268 Fed. 413, 416 (S. D. N. Y.).

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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APPENDIX A

STATUTORY PROVISIONS

8 U. S. C. 405 provides:

> It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured * * * (Act of June 29, 1906, c. 3592, sec. 15, 34 Stat. 601, as amended).

8 U. S. C. 364 provided: [112]

> No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United

[112] This and the following statutes are stated as of the time of petitioner's naturalization.

States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States. (Act of June 29, 1906, c. 3592, sec. 7, 34 Stat. 598.)

8 U. S. C. 381 provided:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 597.)

8 U. S. C. 382 provided:

> It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States, five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to

the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 598).

8 U. S. C. 137 provided in pertinent part:

Other aliens excluded. In addition to the aliens who are by law otherwise excluded from admission into the United States, the following persons shall also be excluded from admission into the United States:

* * * * *

(c) *Aliens believing in, advising, etc., overthrow by force or violence of United States Government, or all forms of law, unlawful assaulting or killing of any Government officers, unlawful damage, etc., to property, or sabotage.*

Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States, or of any other organized government, because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage.

(d) *Aliens writing, publishing, etc., written or printed matter, advising, etc., opposition to organized forms of government, overthrow by force or violence of United*

States Government or all forms of law, unlawful assaulting or killing of Government officers, unlawful damage, etc., to property, or sabotage.

Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating, or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage.

(e) *Aliens members of or affiliated with organization, etc., writing, etc., written or printed matter described in preceding paragraph.*

Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (d).

(f) *What constitutes advising, advocacy, teaching, or affiliation.*

For the purpose of this section: (1) the giving, loaning, or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

(g) *Deportation.*

Any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in this section shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in this subchapter. The provisions of this section shall be applicable to the classes of aliens mentioned therein irrespective of the time of their entry into the United States. (Act of October 16, 1918, c. 186, secs. 1–2, 40 Stat. 1012; June 5, 1920, c. 251, 41 Stat. 1008.)

APPENDIX B

SUMMARY OF THE HISTORY AND STRUCTURE OF THE COMMUNIST ORGANIZATIONS

The history, structure, and relationships of the various communist organizations referred to in the evidence may be summarized as follows:

The Third Communist International. Some time before 1848 the Communist League was organized by Karl Marx and Friedrich Engels. In November 1847, in London, Marx and Engels were directed by the League to prepare a theoretical and practical party program (Ex. 16, p. 121, R. 187; Ex. 7, preface, p. 3, R. 123). Pursuant to this instruction, "The Manifesto of the Communist Party" was written in German and immediately before the Paris insurrection of June 1848 was translated into French (Ex. 7, preface, p. 3, R. 123). The first English translation appeared in London in 1850 (*ibid.*). The defeat of the Paris insurrection, and the conviction and imprisonment of members of the Central Board of the Communist League ultimately led to the dissolution of the League in 1852 (*id.*, pp. 3–4).

In 1864, the International Workers Association, later known as the First International, was established in London under the leadership of Marx (Ex. 16, p. 121, R. 187; Ex. 26, p. 3, R. 274, 835). Its objective was to unite the proletariat of Europe and America; it did not, however, immediately

adopt the "Manifesto" but accepted a different program prepared by Marx (Ex. 7, preface, p. 4, R. 123). In 1871, the members of the First International participated in the Paris Commune (Ex. 16, p. 121, R. 187), but in 1874, the First International was dissolved (*ibid.;* Ex. 7, preface, p. 4, R. 123).

The Second International was established in 1889 at Paris (Ex. 26, p. 3, R. 274, 835) at an international conference of representatives of socialist parties (Ex. 16, p. 121, R. 187). Its objective was to continue the work of the First International (Ex. 26, p. 3, R. 274, 835). The World War, 1914–1918, however, interrupted the Second International, and, according to the Third International writings, the Second International collapsed because its leaders and the Social-Democratic parties and labor leaders in the nations at war supported their respective governments during the war (Ex. 26, p. 4, R. 274, 835; Ex. 16, pp. 121–124, 129, 135, R. 187; Ex. 6, pp. 6, 20, R. 109).

A new movement began with the October 1917 Revolution in Russia and the establishment of the Soviets (Ex. 16, p. 134, R. 187). In March 1919, at the First International Communist Congress, the Third Communist International was created, and it adopted the platform submitted by the German and Russian delegates (*id.,* p. 135). At the Second World Congress held in Moscow, July 17 to August 7, 1920, the Third International adopted "The Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835) and announced its objective as the continuation of the cause initiated by the First International Workers Association (*id.,* p. 4).

The Third Communist International was designated as the single universal Communist Party, of which the parties in each country were to be "sections" (*ibid.*, p. 5).[113] The supreme body of the Third Communist International was the World Congress of the Communist International (*ibid.*), which was to convene biannually and which comprised representatives of all sections (parties) and organizations affiliated with the Communist International (Ex. 6, p. 87, R. 109). All representatives to the World Congress were required to be sent with a "free mandate" (*i. e.* uninstructed); no "imperative mandate" was recognized (*ibid.*).

The World Congress of the Communist International was empowered to decide, approve, and determine the program, tactics and organizational questions of the Communist International and of all sections (Ex. 26, pp. 5–6, 31, R. 274, 835; Ex. 6, p. 87, R. 109). Its resolutions and regulations were binding on all sections (Ex. 26, p. 31, R. 274, 835; Ex. 6, p. 86, R. 109).

The supreme body of the Third Communist International in the periods between Congresses was the Executive Committee of the Communist International (Ex. 26, p. 6, R. 274, 835; Ex. 6, p. 88, R. 109). The particular country in which the Executive Committee "finds its residence at the time" was given the major voice in the Committee; it had

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[113] The International League of Communist Youth was also established as a section of the Communist International subordinate to it and to the Executive Committee of the Communist International (Ex. 26, p. 8, R. 274, 835). A women's section of the Communist International was also established (*ibid.*).

not less than five representatives on the Committee holding "decisive votes" (Ex. 26, p. 6, R. 274, 835). Other large communist sections were entitled to one representative each, with a decisive vote, while the remaining organizations embraced in the Communist International were permitted one representative each, with a "consultative" vote only (*ibid.*).[114]

The Executive Committee's powers, in general, included those of the World Congress, and were to be exercised in the periods between Congresses. The Committee was empowered to confirm all party programs, to issue instructions binding on all sections and parties, to exclude affiliated organizations failing to comply with the regulations issued by the World Congress, and to resolve all organizational questions (*ibid.;* Ex. 6, pp. 88–89, R. 109). The Executive Committee's decisions were obligatory upon all sections pending appeal to the World Congress; the Committee was also vested with authority to annul or amend decisions of Party Congresses, and to expel sections, groups, or individual members (Ex. 6, p. 88, R. 109).

The Executive Committee, in turn, elected a Presidium, responsible to it, to act as a permanent body to carry out its business between meetings (*id.*, p. 89).[115] The Presidium, further, elected a Politi-

[114] The Executive Committee was authorized to include representatives, with consultative votes only, of organizations sympathetic to the International but not yet accepted by it (Ex. 26, p. 7, R. 274, 835).

[115] The Executive Committee was required to meet at least semi-annually, and the Presidium bi-weekly (Ex. 6, p. 90, R. 109).

cal Secretariat to act as the executive body (*id.*, p. 90). The Executive Committee and the Presidium were authorized to establish, throughout the world, permanent bureaus of the Executive Committee to harmonize the work of the various sections; sections were required to observe all instructions issued by such bureaus (*id.*, pp. 89–90). The Executive Committee and the Presidium were also empowered to send instructed representatives to the sections, with authority to participate in the local meetings to which they were sent, and to supervise the local execution of decisions of the World Congress and Executive Committee (*ibid.*). In addition, all sections and other organizations affiliated with the Communist International were required to send minutes of their meetings and reports of their work to the Executive Committee (*id.*, p. 91).[116] Members of the central committees of the sections were permitted to resign only with the consent of the Executive Committee; its permission was also required before section congresses could convene (*id.*, pp. 91–92).[117]

The Communist Parties in the United States. The Communist Parties in the United States find their origin in the expulsion, in 1919, by the Socialits Party, of its left-wing members (Ex. C, p. 270, R. 427; Ex. 12, p. 166, R. 241). At a convention, held in December 1921, several groups of left-wing

[116] An International Control Commission had been established by 1928 with power to investigate the unity of all sections, and the conduct of individual members (Ex. C, p. 91, R. 109).

[117] Sections were required to pay affiliation dues to the Executive Committee in the amount determined by it (Ex. 6, p. 92, R. 109).

Socialists and Communists established the Workers' Party of America (Ex. 26, Workers Party foreword, inside cover, R. 274, 835; R. 838). Even before its formal organization, the Workers' Party was structurally related to the Communist International and had sent delegates to the Third World Congress earlier in 1921 (Ex. 14, p. 8, R. 255). By the time of its fourth national convention in 1925, the Party had changed its name to the Workers' (Communist) Party (Ex. 12, cover title page, p. 166, R. 241; but cf. R. 91, 93). In 1929, the name was again changed, this time to the Communist Party of the United States of America (R. 93). Throughout, however, the identity of the Party remained the same (R. 91–92, 185, 240; Ex. C, p. 270, R. 427; Ex. 12, p. 166, R. 241).

The Workers' Party of America, and the Workers' (Communist) Party were affiliated with the Communist International (R. 202, 831) and comprised one of the International's sections (R. 201–203; Ex. 12, pp. 71–72, 123, 166, R. 241; Ex. 14, p. 9, R. 255). These parties sent accredited representatives to the Communist International (R. 203); they recognized the leadership of the International (Ex. 12, pp. 18, 63, 65–66, 166, R. 241; Ex. 13, pp. 13, 56–61, 86, 100, R. 248) and accepted its instructions (Ex. 12, pp. 41, 65–66, R. 241; Ex. 13, p. 13, R. 248).[118]

The Communist Youth organizations. The International League of Communist Youth (Communist Youth International) traces its history to

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[118] For petitioner's testimony and our discussion of the relationship of the American Parties to the International, see *supra*, pp. 32–45.

the Stuttgart Inauguration Congress of the Youth International, held in 1907. Its theoretical bases lay in Marx's writings concerning juvenile labor, in the draft of "Declaration of Principles" (1916), in Lenin's articles on youth, and in the Program of the Communist International adopted at the Sixth World Congress (Ex. 10, foreword, p. 7, R. 152). In 1929, the Fifth World Congress adopted the "Programme of the Young Communist International" (Ex. 10, R. 152), which, in turn, was confirmed by the Presidium of the Executive Committee of the Communist International (*id.*, p. 15).[119]

The Berlin Programme of the Young Communist International (1919) defined the relationship between the Young Communist International and the Communist International as one of harmony and cooperation, with no elements of leadership and subordination (Ex. 10, foreword, p. 9, R. 152; R. 153). The Second Congress of the Young Communist International, however, in 1921 adopted the principle of subordination of the Young Communist Leagues to the Communist Parties (*id.*, foreword, p. 10).[120] By 1928, the Young Communist International had been designated as a section of the Communist International with full rights and subordinate to the Executive Committee of the Communist International (Ex. 6, p. 92, R. 109).

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[119] This program which summarized the previous "colossal experience in revolutionary practice by the Young Communist Movement" was issued in 1929 (Ex. 10, pp. 8, 14, R. 152). The edition in evidence was issued under the name of the Young Communist League of America (*id.*, title page).

The Young Workers' League bore, in general, the same relationship to the Young Communist International as the American parties to the Communist International. It was affiliated with the Young Communist International and the Communist International (R. 90, 208), and sent delegates to the Congress of the Young Communist International (R. 90). In turn, the Young Workers' League was closely related to the Workers' Party of America. It sent delegates to the latter's conventions (Ex. 13, p. 123, R. 248). One member of the Workers' Party's Central Executive Committee was elected by the Young Workers' League (*id.*, p. 127); and this arrangement was continued when the Workers' (Communist) Party came into existence (Ex. 12, p. 165, R. 241). The reports of the national conventions of the parent bodies included reports embracing the work of the Young Workers' League (*id.*, pp. 7, 23–24).

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[120] The origin of the Young Workers' League is not disclosed by the record. It was open to those between the ages of 16 and 25 (R. 89). Its name was subsequently changed to the Young Workers' Communist League, and then to the Young Communist League (R. 89–90).

Prior to 1921, the Communist International had provided in the "Statutes, Theses and Conditions of Admission" that the International League of Communist Youth was subordinate to the Communist International and the Executive Committee of the Communist International, that the Executive Committee of the Young Communist International should have one representative, with a decisive vote, in the Executive Committee of the Communist International, and that conversely, the Executive Committee of the Communist International had the right to send one representative with decisive vote to the Executive Committee of the Young Communist International (Ex. 26, p. 8, R. 274, 835).

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APPENDIX C

THE COMMUNIST LITERATURE INTRODUCED BY THE GOVERNMENT

The following relates to the nature of the communist literature introduced in evidence; the method of preparation of the literature; and the method of its distribution:

A basic precept of communist tactics was systematic propagandization through publication and distribution of communist literature.[121] A corollary basic principle was that the literature be subject to rigid Party supervision. Thus in 1924, the Party's Central Executive Committee reported (Ex. 13, pp. 42–44, R. 248; see also Ex. 12, p. 78, R. 241) that in accordance with the policy established at the Second National Convention, the Party press had been brought under the centralized ownership of the Party, and the ownership of various publication agencies had been acquired by the Party. Strict adherence to Party principles was required of the literature: All Party periodicals were required to be edited by loyal Communists who had proved their loyalty to the proletariat revolution; the propaganda was to correspond to the programs and decisions of the Third International; and all periodicals were to be made

[121] See R. 98, 99, 100, 101, 210, 211, 212, 236, 238, 239, 240, 248, 252, 263, 269–270, 272, 273; Ex. 13, p. 42, R. 249.

subject to the Presidium of the Party, and the editors in no way given "an opportunity to abuse [their] autonomy" (Ex. 26, p. 27, R. 274, 835).[122] One editor was by convention resolution removed and replaced by a member who "understands, accepts, and fights for the Communist line of our Party and the Communist International" (Ex. 12, p. 145, R. 241), while another Communist was expelled from the Party upon charges which included the accusation that he had failed to comply with the instruction of the Communist International that he subject his paper to control of the Party (*id.*, p. 97). Books not in conformance with Party principles were barred from Party schools and classes (R. 163–164, 834).

The publishing agencies of the Communist Party, issuing its literature, included:

The Literature Department of the Workers' Party (R. 98; Ex. 13, p. 38, R. 248; Ex. 12, p. 54, R. 241); absorbed by The Daily Worker Publishing Company, a corporation, in January 1925 (Ex. 12, pp. 152, 156, R. 241).

The Liberator Publishing Company (Ex. 13, pp. 41, 42, R. 248; Ex. 12, pp. 56, 57, 59, R. 241).

The Daily Worker Publishing Company, a corporation (R. 212; Ex. 13, pp. 110–117, R. 248; Ex. 12, pp. 152–164, R. 241).[123] The campaign of the Party to found this corporation was initiated

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[122] The Party periodicals were, in turn, to publish all decisions and official documents of the Executive Committee of the Communist International (Ex. 6, p. 89, R. 109).

[123] Petitioner testified that he did not know whether this company was authorized to issue communist literature (R. 128).

by the Central Executive Committee on August 8, 1923 (Ex. 13, pp. 44, 110, R. 248) and continued until at least December 22, 1923 (Ex. 13, pp. 44, 110–117, R. 248). The campaign was successful, and the corporation commenced operations in January 1924 (Ex. 13, p. 115, R. 248), and during that year, and subsequently, it operated on an extensive basis (Ex. 12, pp. 152–164, R. 241). In January 1925, it took over the publication of Party pamphlets and books (Ex. 12, pp. 43, 156, 157, R. 241; R. 243). It cooperated with the propaganda section of Agitprop in the preparation of theoretical publications (books and pamphlets) (Ex. 12, p. 151, R. 241); it did all of the printing for the National Office of the Party, for the Party, and for a number of the Federations (*id.* p. 153, R. 241); it became the center of the Party's press (*id.* p. 21), the source of all communist literature in the United States and the agent here for all foreign communist publications (*id.*, back cover), purchased a building, printing plant and equipment (*id.*, pp. 157, 159), and financed, to a large extent, a number of Party institutions (*id.*, p. 153). After its establishment, the English language press of the Party, and the publication and distribution of Party literature, came under centralized management (*id.*, pp. 22, 155).

The Workers Library Publishers, a corporation (R. 99).[124]

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[124] Petitioner testified, on the one hand, that, long before he had become a Communist, this organization had been organized by members of the Party to publish communist literature (R. 99) and, on the other hand, that it was not a communist organization or controlled by the Party (R. 830).

The International Publishers, a corporation (R. 99).[125]

The Western Workers Publishing Company (R. 272).

The Party distributed and circulated its own literature (Ex. 13, p. 27, R. 248; Ex. 12, pp. 13, 42, 43, 157, R. 241). Petitioner also testified that the Party maintained bookstores (R. 159, 238, 239, 240, 273; Ex. 13, p. 42, R. 248), and that some of the bookstores were not under the control of the Party but, as he understood it, were agents of the International Publishers or the Workers Library Publishers (R. 830). In addition, for the dissemination and study of its literature, the Party maintained a speakers' bureau (Ex. 13, p. 32, R. 248), and established, maintained and conducted schools, study classes and forums.[126]

The literature introduced in evidence by the Government, its nature and distribution, and petitioner's familiarity with it, may be summarized as follows:

1. Official constitutions, programs, and reports of activities covering the period prior to and shortly after 1927:

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[125] Petitioner testified that in recent years, the Party "carried on its work" through this organization and the Workers Library Publishers (R. 99) but that they were not controlled by the Party (R. 830).

[126] R. 87, 88, 93–94, 185, 193, 194, 196, 197, 198, 200, 203, 204, 205, 222. The systematic educational work was reflected in the "Resolution on the Bolshevization of the Party," adopted by the Fourth National Convention (Ex. 12, pp. 91–92, R. 241), requiring Party leaders to lecture in Party schools and to members, and further requiring the establishment and development of a corps of members

"Statutes, Theses and Conditions of Admission to the Communist International" (Ex. 26, R. 274, 835). This work was issued by the Workers' Party of America in 1923 (*id.*, inside front cover). The "Statutes" constituted the precepts of the Workers' (Communist) Party in 1925 (Ex. 12, pp. 137–138, R. 241). The copy in evidence was seized in a raid on Communist headquarters in 1928, and a number of other copies were taken from Party leaders on their arrest (R. 274). Petitioner testified that he had no recollection of the particular edition in evidence, that he did not know of the Party's having published a work of this kind, but that he had no doubt that "possibly" a pamphlet called "The Statutes and Resolutions of the Communist International" was sold in the bookshops (R. 836).

"Program and Constitution of the Workers Party of America" (adopted at National Convention, December 1921, amended at National Convention, 1923–1924) (Ex. 27, R. 276; see R. 233, 275–276; Ex. 13, pp. 73–86, R. 248). This work was published by the Literature Department of the Workers' Party (R. 98; Ex. 12, pp. 54, 152, 156, R. 241; Ex. 13, p. 38, R. 248). It was distributed by the Party to members (R. 233, 275) and during 1925–1926 was circulated by the Party (R. 275). Over a half-million copies were distributed (Ex. 13,

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trained in theory, capable of carrying out the task of education. Petitioner as educational director of the Young Workers' League organized forums and study classes for that organization (R. 87) and also participated in the classes or forums maintained by the Workers' Party and Workers' (Communist) Party (R. 93, 94, 185, 201).

p. 27, R. 248). The copy in evidence was obtained from Party headquarters in 1927 (R. 235, 239, 248). Petitioner testified that he was not "personally" familiar with this work, but he nevertheless explained its general contents (R. 836–837).

"The Second Year of the Workers Party of America" (including the constitution, program, and the report of the Central Executive Committee, Third National Convention, 1923–1924) (Ex. 13, R. 248). This work was published by the Literature Department of the Workers Party (see cover, title page), was distributed by the Party as its official report, and was sold and distributed by Party book stores (R. 248; see Ex. 12, pp. 54, 152, 156, R. 241; Ex. 13, p. 38, R. 248). Petitioner testified that he was not familiar with this pamphlet (R. 161, 883).

"The 4th National Convention of the Workers (Communist) Party" (including Report of the Central Executive Committee and Resolutions) (1925) (Ex. 12, R. 241). This was published by the Daily Worker Publishing Company (cover, title page), was distributed by the Party as an official document (R. 240–241) and was sold and circulated by the Party (R. 238, 240). Petitioner testified that he was not familiar with the work (R. 160) although earlier he had testified that he attended the convention whose proceedings the work reports (R. 97).

"The Platform of the Class Struggle" (National Platform of the Workers (Communist) Party, 1928) (Ex. 15, R. 264). This pamphlet was published by the Workers Library Publishers (title page), was distributed by the Party as its offi-

cial 1928 platform and as an official publication (R. 263). It was sold in Party book stores (*ibid.*). Petitioner testified that he was not familiar with this work, and had not attended the convention at which it was adopted, but that he agreed with the general programs and principles of the Party at that time (R. 162). It should be noted that it was during this year that petitioner attended the Sixth World Congress of the Communist International in Russia (R. 834).

"Acceptance Speeches" (William Z. Foster and Benjamin Gitlow, candidates for President and Vice-President on Workers' (Communist) Party ticket, 1928) (Ex. 14, R. 255). This work was published by the Workers Library Publishers (title page), was circulated by the Party as an official document (R. 254), and was distributed by it (R. 254, 255). Petitioner testified that he was not present at the convention at which the speeches were delivered and was unfamiliar with the book (R. 158). It was in 1928 that petitioner was in Russia (R. 834).

"Programme of the Communist International" (adopted in 1928) (Ex. 6, R. 109). This work was published in 1929 by the Workers Library Publishers (R. 110). It was circulated by the Party, and sold and distributed by it in book stores as official literature (R. 237). It was used in the Party educational program and study classes (R. 206). Petitioner testified that he was familiar with this program "in so far as I have read the resolutions and reports of that [Sixth World] Congress" (R. 103; cf. R. 834) and that he agreed with its general "political" (R. 103) or "theoretical" (R. 108)

conclusions. Petitioner attended the Sixth World Congress which adopted this program (R. 834).

"Programme of the Young Communist International" (1929) (Ex. 10, R. 152). This program, adopted in 1928 (R. 833, 834), summarized the previous revolutionary experience of the Young Communist movement, and was published by the Young Communist League of America (Ex. 10, title page, and p. 8, R. 152). It was circulated by the Party, and distributed and sold in Party book stores as official literature (R. 237). It was used in the Party educational program and study classes (R. 147–148, 207–208). Petitioner testified that he was familiar with this work (R. 147).

2. Literature covering the period prior to petitioner's naturalization and relating to the communist program, activities, tactics, and principles:

Stalin, "The Theory and Practice of Leninism" (1924–1929, R. 158) (Ex. 11, R. 212). This work was published by the Daily Workers Publishing Company (cover, title page). A different edition of this work was used in the Party study classes from June 1924 to April 1926 (R. 209–210; see R. 185, 194, 201, 222). Petitioner testified that he had read and was familiar with this work but not the particular edition in evidence (R. 158, 159). Petitioner did not introduce the edition with which he was familiar.

Lenin, "The State and Revolution" (April 1924) (Ex. 8, R. 129). This work was published by The Daily Worker Publishing Company (cover, title page), was circulated by the Literature Department of the Workers Party of America, was distributed by the Workers' (Communist) Party in several edi-

tions, and was sold by Party book stores (R. 127-128, 238–239). It was "probably" used in the study classes and educational program of the Young Workers' League during the period when petitioner was the League's educational director (R. 89, 128). It was also used in the study classes of the Workers' Party and the Workers' (Communist) Party (R. 94, 206–207). Petitioner's testimony indicated his familiarity with this work (R. 89, 127–128).

Bucharin and Preobraschensky, "A B C of Communism" (Vol. I) (Ex. 16, R. 187) (dated at Moscow in 1919) (Ex. 16, p. 7), translated in 1921 (Ex. 16, p. 4). This work was published between 1920 and 1924 by the Literature Department of the Workers Party of America (cover, title page) and was officially circulated by the Party (R. 269). It was expressly designed for study class purposes (Ex. 16, pp. 5–6) and was used in 1924 and 1925 as a text book in the Workers' Party study classes and in instructing teachers (R. 185, 186, 193, 194, 202). Petitioner testified that he had read and was familiar with this book (R. 163) but that it was subsequently withdrawn from use in, and barred from, the Party schools because its authors disagreed with the Party on several issues (R. 163–164, 834).

Lenin, "'Left-Wing' Communism: An Infantile Disorder" (written, 1920; copyright, 1934; third printing, 1937) (Ex. 9, R. 144). This authorized edition (R. 144) was published by International Publishers (Ex. 9, cover, title page). This work was circulated by the Party a few years after 1920 (R. 143), was distributed and sold by the Party bookstores (R. 239), and was used in the

study classes of the Young Workers' League during the period when petitioner was the League's educational director (R. 87, 89), as well as in other Party study classes (R. 144, 207). Petitioner testified that he was familiar with this work (R. 143).

Marx and Engels, "Manifesto of the Communist Party" (1932) (Ex. 7, R. 123). This was an authorized Party publication (R. 122–123) published by International Publishers (Ex. 7, cover, title page). This work was circulated by the Party, sold in Party book stores (R. 237–238), and used in the Party educational program and study classes (R. 206). Petitioner testified that he was familiar with this work (R. 122–123).

3. Literature published subsequent to petitioner's naturalization and relating to the communist program, activities, tactics, and principles:

Olgin, "Why Communism? Plain Talks on Vital Problems" (1935) (Ex. 18, R. 166) (prior editions, 1933, 1934, see back of title page). This work was published by the Workers Library Publishers (title page). It was one of the most widely distributed of Party pamphlets, was sold in Party book stores and circulated by the Party (R. 165, 220–221, 272–273, 835). It was also used as a text book in Party classes (R. 220, 221). Several other editions of the same work were published by the Western Workers Publishing Company (R. 272). Petitioner testified that this book was published while he was out of the country, that he had heard and read about it, but did not believe he had ever read it (R. 165).

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